H.R. 3981, ACCELERATED REVENUE, REPAYMENT, AND SURFACE WATER STORAGE ENHANCEMENT ACT; H.R. 3980, WATER SUPPLY PERMITTING COORDINATION ACT; AND DISCUSSION DRAFT, TO AMEND THE SECURE WATER ACT OF 2009

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

Wednesday, February 5, 2014

Serial No. 113–60

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.fdsys.gov
or
Committee address: http://naturalresources.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

86–620 PDF WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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Wednesday, February 5, 2014
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Natural Resources
Washington, DC

The subcommittee met, pursuant to notice, at 10:01 a.m., in room 1324, Longworth House Office Building, Hon. Tom McClintock [Chairman of the subcommittee] presiding.

Present: Representatives McClintock, Lummis, Tipton, Mullin, LaMalfa, Hastings, Napolitano, Costa, and Huffman.

Mr. MCCLINTOCK. The subcommittee will come to order. The Chair notes the presence of a quorum, which, under committee rule 3(e), is two Members.

STATEMENT OF THE HON. TOM MCCLINTOCK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCCLINTOCK. The Subcommittee on Water and Power has taken a great deal of testimony on what needs to be done to break down the barriers that have stopped serious development of new water storage. And this hearing begins the process of distilling that testimony into practical legislation. We have two bills and one discussion draft today to begin that process.

Droughts are not preventable. But suffering from droughts is preventable. Water is abundant, but it is unevenly distributed over time and space. We build dams to take water from wet years so that it is available in dry ones, and we build aqueducts to move water from wet areas to dry areas.

The poster child for California's failure to do so is the Folsom Dam, the principal water storage for Sacramento and its suburbs. One million acre-feet when full, it is now nearly empty. Up-river from Folsom is the site of the Auburn Dam. Half-built in the 1970s, and then abandoned in the first Jerry Brown administration, it would have provided 2.3 million acre-feet of additional storage. It would have generated 800 megawatts of clean and inexpensive electricity for the region at a time when we are spending billions of dollars for levees in the Sacramento Delta to protect against a 200-year flood. Auburn, by itself, would have provided protection against a 400-year flood. That dam, by itself, could have stored enough water to fill Folsom Lake nearly 2½ times.

Well, the first bill before us today, offered by Chairman Hastings, should be a no-brainer. It simply allows for the early payment of water contracts between water districts and the Bureau of Reclamation in the same manner as one would prepay a home loan. The cash-strapped Federal Treasury benefits by an immediate infusion of cash, and the local districts are relieved of long-term interest costs and the attendant paperwork requirements. Right now, any district that wants to do so must come to Congress. And, over the past decade, five pre-payment bills have been signed into law for water districts in Nevada, Utah, Idaho, Oregon, and California. Chairman Hastings' legislation proposes to standardize this bipartisan practice.

Second, I am pleased to join Congresswoman Cynthia Lummis to present H.R. 3980, the Water Supply Permitting Coordination Act. It comes from exhaustive testimony we took last year concerning the cost-prohibitive and time-consuming duplication of regulations and requirements by overlapping Federal agencies when a district is trying to construct new water storage.

Under current law, districts must navigate a convoluted permitting process for the construction of new storage, in which a host of Federal agencies carry out a dizzying array for permits, decisions, and approvals, each just disjointed from the other, despite the fact that they are studying the same project in the same location, and trying to evaluate the same data.

To address this senseless bureaucracy, H.R. 3980 would put in place a framework in which Federal agencies with permitting responsibilities for the construction of new water storage must work together, coordinate their schedules, share data and technical materials, and make their findings publicly available. The end result would be fewer delays, more efficient use of taxpayer dollars, and, ultimately, more abundant water supplies.

Finally, the subcommittee will consider a discussion draft text offered by Chairman Hastings that would create a surface water storage enhancement program for the construction of new storage facilities and augmentation to existing facilities. The dedicated revolving account created by this program is in keeping with the Beneficiary Pays principle, and will, for the first time in a long time, recommit the Bureau of Reclamation to its core mission of providing abundant water supplies for multiple use.

These bills are intended to advance the theory that we can once again return to the policy of abundance. More water storage equals more water for a plethora of beneficiaries, including the environment. I am pleased to welcome our witnesses here today from the Family Farm Alliance, who will speak to this urgent need, and have been instrumental in providing input for these bills.

For years, we have been told that water conservation is the answer to our problems. Well, water conservation is critically important in managing a major drought, but it does not add to supply. What we are now discovering is that, by confusing conservation with supply, we have no way to cope with a major drought. If this current crisis teaches us anything, it must be that there is no substitute for adding supply. And these bills begin to restore this process for a new generation that is sadder and wiser for the mistakes of their predecessors.

[The prepared statement of Mr. McClintock follows:]

PREPARED STATEMENT OF THE HONORABLE TOM MCCLINTOCK, CHAIRMAN, SUBCOMMITTEE ON WATER AND POWER

The Subcommittee on Water and Power has taken a great deal of testimony on what needs to be done to break down the barriers that have stopped serious development of new water storage, and this hearing begins the process of distilling that testimony into practical legislation. We have two bills and one discussion draft today to begin that process.

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Chairman Hasting's legislation proposes to standardize this bi-partisan practice.

I am pleased to join Congresswoman Cynthia Lummis to present H.R. 3980, the Water Supply Permitting Coordination Act.

It comes from exhaustive testimony we took last year concerning the cost-prohibitive and time consuming duplication of regulations and requirements by overlapping Federal agencies when a district is trying to construct new water storage.

Under current law, districts must navigate a convoluted permitting process for the construction of new storage in which a host of Federal agencies require a dizzying array or permits, decisions, and approvals—each disjointed from the other—despite the fact that they are studying the same project, in the same location, and trying to evaluate the same data.

To address this senseless bureaucracy, H.R. 3980 would put in place a framework in which Federal agencies with permitting responsibilities for the construction of new surface water storage projects must work together, coordinate their schedules, share data and technical materials, and make their findings publicly available. The end result would be fewer delays, more efficient use of taxpayer dollars, and ultimately, more abundant water supplies.

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These bills are intended to advance the long-neglected objective of returning to the policy of abundance. More water storage equals more water for a plethora of beneficiaries, including the environment.

I'm pleased to welcome our witnesses here today from the Family Farm Alliance who will speak of this urgent need and have been instrumental in providing input on these bills.

For years, we've been told that water conservation is the answer to our problems. Water conservation is critically important in managing a major drought—but it does not add supply. What we are now discovering is that by exhausting conservation measures in wet years, we have no latitude to manage a drought when it comes. If this current crisis teaches us anything, it must be that there is no substitute for adding supply, and these bills begin to restore this process for a new generation that is sadder and wiser for the mistakes of their predecessors.

Mr. MCCLINTOCK. With that, I yield to the gentlelady from California, the Ranking Member Mrs. Napolitano, for 5 minutes.

STATEMENT OF THE HON. GRACE F. NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. NAPOLITANO. Thank you, Mr. Chairman, and I welcome our first hearing of the new year.

The bills we are hearing today have a common theme: increasing our water supplies, to which we have no objection. And we welcome this hearing. The legislation being vetted, however, only looks at one side of the water issue: surface storage. It doesn't look at ground water, it doesn't look at efficiencies, water recycling, desalination, education, et cetera.

It also attempts to pay for new storage through pre-payment, a debt owed to the government on projects built over 50 years ago. Even if this process is allowed, it is unclear that they would take the option to pre-pay their debt, given the 40 years interest-free—I would say subsidized—free repayment period.

If we are looking for solutions to our water problems, and for certainty for our communities, then we must have full consideration

of all our options, including underground storage, aquifer, or other alternatives like conservation, desalination, recycling, et cetera. These bills do not account for any other option, except for surface storage.

The Majority want to argue that the environmental regulations have hindered construction of new facilities in the West. There is a bigger issue here, from moving from study to construction, and that is cost. Even if you move from study to construction, how can you guarantee these communities the billions of Federal appropriated dollars, given our budget deficits, that is necessary for construction? The prepayment legislation seeks to solve this. But, again, it is still unclear whether there is enough interest from irrigators to offset the $2 billion this legislation allows.

The water solutions presented today will not create new water for decades to come, and the cost will be exorbitant. Water managers have already realized they cannot wait to compete for the limited Federal dollars, or the 10 to 20 years or more it will take to construct a facility before one drop of water is realized. They need to solve their problems now.

For some communities that include surface storage, like Contra Costa District, Los Vaqueros Project, or the self-funded Metropolitan Water District's Diamond Valley Reservoir. Los Vaqueros' 60,000-feet construction is expected to be completed this spring, on time, on budget, and no litigation. Water managers are looking for projects that have limited Federal involvement that can produce water, I mean real water, wet water, on a faster scale.

This can also be seen in 53 water recycling projects Congress has authorized, and since 1992 has created 680,000 acre-feet of water in California alone. That means title 16, gentlemen.

New storage, when appropriate, is not impossible. California is at 5.6 million acre-feet in new ground water and surface water storage in the last 20 years. In this environment, not all of the water needs in the West can or should be met by new storage, dams or bigger dams. New storage is not always the right answer or the only answer. And the same can be said of water recycling. We must learn to conserve, educate, store, and do all of the above.

If we were serious about creating more water, we should not discriminate between one solution or another. All solutions include recycling, the conservation, desalination, the brackish water, education of our general public, et cetera. They should all be on the table. We must review all methodology, all new technology, anything we can, and work with all parties to achieve a goal of more real, wet water.

Thank you, Mr. Chairman, and I yield back.

Mr. MCCLINTOCK. The Chair is now pleased to recognize the distinguished Chairman of the Natural Resources Committee, Doc Hastings of Washington State.

STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. HASTINGS. Thank you very much, Mr. Chairman. And, again, thank you for the courtesy of allowing me to testify at this subcommittee hearing.

Today's hearing represents a major step in advancing the need for new water storage. For generations, legendary facilities like the Grand Coulee Dam in my State, have impounded water for multiple uses. Deserts became the most productive farm land in the world. Communities, rural and urban alike, sprouted up because of abundant water supplies and renewable hydropower. Cold water flows for downstream fisheries became year-round, rather than seasonal. Ravaging flood cycles were tamed, and water-based recreation allowed boats to enjoy all of our western waters. These are just some of the benefits of water storage.

I have often talked about how existing facilities have been undermined by litigious groups, judicial activism, environmental regulations not scientifically justified, and bureaucracy run amok. That remains today. One can only look at what is happening in California. When I lived in California as a young man, the Central Valley and the State water projects played a major role in making California the Golden State.

Now, the State is in the midst of an unparalleled and emergency drought situation. The lack of rainfall has caused this calamity, but it has been exacerbated by Federal regulatory actions that place the needs of a 3-inch fish over people. This is not only heartbreaking for those about to lose their livelihoods, but it is also an avoidable travesty. And if it can happen in California, it can happen anywhere, even in my Pacific Northwest.

In my Central Washington State district, the Yakima Valley is the poster child for needing new surface storage. Conservation plays an important part in meeting our water needs in the valley, but farmers, communities, and environmental needs demand that we create new water. And, time and again, the numbers alone dictate the need for new storage. From day one, I have supported efforts to build new storage in the Yakima Basin, and I commend and continue to urge forward the current integrated plan that is currently underway.

However, for new and expanded storage reservoirs to become a reality in the Yakima Valley and elsewhere in the West, there must be a sea-change in how the Federal Government reacts to new storage. The current paralysis-by-analysis approach must be streamlined. And we, as policymakers, must find innovative ways to reinvest in storage, while adhering to the Beneficiaries Pay Rule.

That is exactly what these bills before us do today. I have taken the lead in sponsoring two of these positive solutions. The first would provide for a voluntary early repayment for existing water Federal obligations—or Federal water obligations by water users, and the investment of these funds into a new account to be used explicitly for new and expanded water storage capacity.

The second is a discussion draft that would dedicate a portion of existing authorized funding for the Bureau of Reclamation into a dedicated account for more storage. These bills complement each other, and both are aimed at the same goal: identifying new sources of funds for new storage. In these fiscal times, it is going to require creativity and new ideas to achieve water solution. This is true not just for more storage, but also for the corresponding commitments to habitat, efficiency, fisheries, and other identified priorities.

And the third bill, offered by the subcommittee Chairman, Mr. McClintock, provides another new common-sense solution to help solve the challenge of new water storage by streamlining Federal red tape and empowering the Bureau of Reclamation to facilitate timely completion of regulatory requirements.

Now, I realize that there are many who have reservations about these bills, and they are entitled, of course, to have their views. But simply saying no, and believing that the status quo—that is simply not the answer to meet our growing needs of the West.

Without a doubt, conservation of our existing resources is a must. But it is not a panacea. We cannot conserve our way to prosperity when we lose water to the ocean and don't have any water to recycle. We need to create more water storage capacity in the Yakima River Basin, California, and other areas throughout the West, not divvy up every increasingly scarce resources in times of changing weather patterns and growing human and species needs.

We have the power to continue our progress, and that is the purpose of these three bills, to further build upon the premise of capturing water in wet times to provide for dry times.

[The prepared statement of Mr. Hastings follows:]

PREPARED STATEMENT OF THE HONORABLE DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Thank you, Chairman McClintock, for holding this important hearing.

Today's hearing represents a major step in advancing the need for new water storage.

For generations, legendary facilities like the Grand Coulee Dam impounded water for multiple uses. Deserts became the most productive farmland in the world. Communities—rural and urban alike—sprouted up because of abundant water supplies and renewable hydropower. Cold water flows for downstream fisheries became year-round rather than seasonal. Ravaging flood cycles were tamed and water-based recreation allowed boats of all kinds to enjoy our western waters. These are just some of the benefits.

I've often talked about how our existing facilities have been undermined by litigious groups, judicial activism, environmental regulations not scientifically justified and bureaucracy run amok.

That remains today. One can only look to what's happening in California. When I lived in California as a young man, the Central Valley and State Water Projects played a major role in making California the Golden State. Now, the State is in the midst of an unparalleled and emergency drought situation. The lack of rainfall has caused this calamity but it has been exacerbated by Federal regulatory actions that place the needs of a 3-inch fish over people.

This is not only heartbreaking for those about to lose their livelihoods, but it's also an avoidable travesty. And, if it can happen in California, it can happen anywhere—even in the Pacific Northwest.

In my Central Washington State district, the Yakima Valley is a poster child for needing new surface storage. Conservation plays an important part of meeting water needs in the Valley, but farmers, communities and environmental needs demand that we create new water. And, time and again, the numbers alone dictate the need for new storage. I commend the efforts underway in the region to move forward on new storage.

However, for new and expanded storage reservoirs to become a reality in the Yakima Valley and elsewhere in the West, there must a sea-change in how the Federal Government reacts to new storage. The current paralysis-by-analysis approach must be streamlined and we, as policymakers, must find innovative ways to re-invest in storage while adhering to the "beneficiaries pay" rule. That's exactly what these bills before us do today.

Without a doubt, conservation of our existing resources is a must, but it's not a panacea. We cannot conserve our way to prosperity when we lose water to the ocean or don't have any water to recycle. We need to create more water supplies, not divvy up ever-increasingly scarce resources in times of changing weather patterns and growing human and species needs.

I realize some may have reservations about these bills and they are entitled to their views. But, "No" and believing in the status quo are not answers to meet the growing needs of the West.

We have the power to continue our progress and that's the purpose of these bills—to further build upon the premise of capturing water in wet times to provide for dry times.

Thank you.

Mr. HASTINGS. With that, Mr. Chairman, I thank you for the courtesy, and yield back.

Mr. MCCLINTOCK. Good, thank you. If there are no other opening statements by Members, we will move right to the testimony. I think all of you have been before the subcommittee before, you know how the lighting system works, and you know that your testimony in full will be printed in the record, and that you are limited to 5 minutes, as timed by the lights.

And now I would like to introduce the gentlelady from Wyoming, Mrs. Lummis, to introduce our first witness.

Mrs. LUMMIS. Thank you, Mr. Chairman. It is very much my pleasure to welcome Pat O'Toole from Savery, Wyoming, to the hearing today. Before the hearing, Pat and I were visiting, and he said, "Do you know that you served in the Wyoming legislature with my father-in-law, George Salisbury and/or me for 16 years?" And it was—Pat became a father and I became a mother within just a few days of each other in 1985, when we were in the Wyoming legislature together. And, of course, our children are now adults, and we are very proud of them.

And I can tell you that George Salisbury, Pat's father-in-law and I, and Pat and I, since the 1970s, have been working on water issues, and working arm in arm and hand in hand. And what is so wonderful about States and families is George Salisbury and Pat O'Toole are devout Democrats. And, of course, I am a devout Republican. Water transcends partisan politics, it transcends regions, it transcends the kinds of issues that divide us here in Congress.

So, I am a little surprised to hear a hearing, like, on water, of all things, this precious, important resource that starts on a bit of a partisan tone. Water should not be a partisan issue. And I am so proud to have Pat here today. He has worked on enormously important issues involving the Colorado River drainage his entire adult life in a practical, pragmatic, smart way. His input and that of the Family Farm Alliance has aided our efforts to draft water storage legislation, and I look forward to hearing his testimony. Welcome, Pat.

STATEMENT OF PATRICK O'TOOLE, PRESIDENT, FAMILY FARM ALLIANCE, SAVERY, WYOMING

Mr. O'TOOLE. Thank you, Mrs. Lummis and Chairman McClintock and Ranking Member Napolitano. It is really a pleasure for me to be here. This committee has been very friendly to the Family Farm Alliance and to us working together for many years. And it is so exciting to see this bill as an opportunity to look at what we have all experienced, as ranchers and farmers.

I will tell you that part of the motivation right now for me being in DC—not only this hearing, but many of my friends from California are here—the Family Farm Alliance has a monthly con-

ference call and an annual meeting. And in all those years that I have been involved, I have never felt the raw emotion that I feel now for my good friends from California. And they are in dire straits. Because, in reality—and my own personal experience reflects this—we really stopped doing the infrastructure and the planning for America for a couple or three decades, and it is time to reinvigorate that process.

It is, in some ways—I talked to my wife this morning, it is 18 below, we have some snow on the Upper Colorado River. And yet, when I see the pictures of the grazing lands and the farmlands in California—I took a tour last fall of the Central Valley and the San Francisco Bay area. I am looking at the kind of planning that needs to happen to make not just California, but all of the West, the reservoir of rural growth that it has always been.

I serve on several different boards. One is called AGree, and it is an 8-year process of looking at our food supply. The fact that we have to almost double our food supply over the next 40 years is never going to go away. We recognize that the numbers are just so persuasive. And the American part of that is crucial. And the ability to store water is crucial to that process.

You know, my personal experience is that it took 14 years to permit a project in our valley that was crucial to us. And it was built in 2 years, and resulted in—in the 1990s, during a drought—of late water coming to our ranchers and farmers so that they could have late-season irrigation. But what it also did is created fisheries that we now have taken a value that is so beautiful and productive. And what we have found is a balance in our watershed, working together in both the conservation side and the production side. But the time it takes to permit projects is unconscionable.

And so, the bill anticipates a process where the Federal system will work together. And what I saw, personally, as a member of the Wyoming legislature and a proponent of a project in our valley is that multiple bites of the apple by the Federal system took so much time that our project, which initially was a 50,000 acre-foot project became a 25,000 acre-foot project. It was half the size it needed to be the day it was built. And we all know that. We are now working on a second project with the Wyoming water development people to look at the upper part of the valley.

And in our particular case, and our family's case, it is going to benefit not only our irrigation, but our fishery. And I think that there is a revolution going on in the West right now. Watershed groups are forming everywhere through the Family Farm Alliance, which represents irrigators from the 17 States. It is just remarkable, how people are coming together in a very non-partisan way that shows the balance of the future, and that we realize that single-purpose dams aren't appropriate. We all know that. But the Federal system hasn't moved fast enough to take advantage of that opportunity, and I think this bill is a great first step to begin that process.

And I will tell you that I am so proud my daughter, Meghan, who is on our conservation district board, spoke to the National Association of Conservation Districts the day before yesterday in California, talking about how a watershed can come together and do multiple things.

The ability to understand how important the storage component is I have heard over and over and over again throughout the West. Strategic, small storage is going to be anticipated by every watershed that comes together to work together. The process from the Federal system has to be able to anticipate that. Because if we don't, the costs are astronomical, in terms of 5 years, 10 years, 15 years from the time of agreement to go forward.

And so, I welcome this bill, and the Family Farm Alliance will be here to help you in any way to go forward. Thank you so much.

[The prepared statement of Mr. O'Toole follows:]

PREPARED STATEMENT OF PATRICK O'TOOLE, PRESIDENT, FAMILY FARM ALLIANCE, SAVERY, WYOMING

H.R. 3980—WATER SUPPLY PERMITTING COORDINATION ACT

Chairman McClintock, Ranking Member Napolitano and members of the subcommittee:

Thank you for the opportunity to appear before you to discuss the *"Water Supply Permitting Coordination Act",* legislation that provides a critical first step toward addressing current regulatory and bureaucratic challenges that many times will delay or even halt the development of new water supply enhancement projects in the Western United States. My name is Patrick O'Toole, and I serve as the president of the Family Farm Alliance. The Alliance advocates for family farmers, ranchers, irrigation districts, and allied industries in 17 Western States. The Alliance is focused on one mission—to ensure the availability of reliable, affordable irrigation water supplies to western farmers and ranchers.

My family operates a cattle, sheep and hay ranch in the Little Snake River Valley on the Wyoming-Colorado border. I am a former member of Wyoming's House of Representatives and I served on the Federal Government's Western Water Policy Review Advisory Commission in the late 1990s. I currently serve on the Advisory Committee for AGree, an initiative that brings together a diverse group of interests to transform U.S. food and agriculture policy so that we can meet the challenges of the future. I also served for 2 years on a Blue Ribbon Panel intended to provide leadership for a project to support the development of the Natural Resource Conservation Service's [NRCS] Program and Policy Statement as a part of the process mandated by the Resource Conservation Act [RCA].

Probably most pertinent to the focus of today's hearing is my personal experience in working with envisioning, designing, permitting, and finally building new water storage projects in the West. I was directly involved with one project that has already been built, and I am currently working with government agencies, conservation groups, and other stakeholder interests to advance another water storage project in my home State of Wyoming.

Family Farm Alliance members rely on the traditional water and power infrastructure built over the last century to deliver irrigation water supplies vital to their farming operations. Our membership has been advocating for new storage for over 20 years, and we have provided specific recommendations to Congress and the White House on how to streamline restrictive Federal regulations to help make these projects happen. Water conservation and water transfers are important tools for improving management of increasingly scarce water resources. However, our members believe these demand-management actions must be balanced with supply enhancement measures that provide the proper mix of solutions for the varying specific circumstances in the West.

Regardless of cause, climate variability is one critical factor that underscores the need to develop new water storage projects in the Western United States. There are several reports [1] that suggest existing reservoirs will not be capable of safely accepting the earlier, more intense snowmelt that has been predicted for many western watersheds. A report released in 2006 by the State of California predicted that climate change would result in a drastic drop in the State's drinking and farm water

[1] Including: California Climate Change Center, 2006—*Our Changing Climate—Assessing the Risks to California, Summary Report.* Tanaka et al. 2007, *Climate Warming and Water Management Adaptation for California.* Department of Civil and Environmental Engineering, Department of Agricultural and Resource Economics, University of California, Davis. May 3, 2007 Testimony Submitted on Behalf of The Western Governors' Association to U.S. House Committee on Science and Technology.

supplies, as well as more frequent winter flooding. The report suggested that warmer temperatures will raise the snow level in California's mountains, producing a smaller snowpack and more wintertime runoff. This means more floodwaters to manage in winter, followed by less snowmelt to store behind dams for cities, agriculture, and fish. Water resources experts in other parts of the West also realize that new surface water storage projects may be necessary to capture more snowmelt or more water from other sources.

Some western water managers believe there will likely be a "rush" to re-operate existing multi-purpose water storage projects to restore some of the lost flood protection resulting from the changed hydrology associated with climate change. These projects were designed to provide a certain level of flood protection benefits that will be reduced because of more "rain-induced flood" events. There will be a call to reduce carryover storage and to operate the reservoirs with more flood control space and less storage space. If this is done, it will even further reduce the availability and reliability of agricultural and urban water supplies.

Further, many water users are located upstream of existing reservoirs. These users must then rely on direct or natural flows that are primarily fueled by snowmelt. In the Rocky Mountain West, snowmelt traditionally occurs over several months during the onset of the irrigation season, and thus the snowpack can be referred to as a type of water storage. Since conveyance systems are never 100 percent efficient, water is diverted, conveyed and spread on the land in excess of the net irrigation demand. This surplus returns to the stream and recharges groundwater aquifers, which augments water supplies for all users located downstream from the original diversion. It also supports valuable habitat used by migrating waterfowl. If more runoff were to occur during warm cycles in winter before the onset of the irrigation season, this not only would impact water supply availability to these producers by decreasing the storage capacity usually provided by the tempered melting of the snowpack, but would also impact the utility associated with the return flows from their irrigation practices. As the snowpack is reduced by early melting, this reduced storage capacity must be replaced by new surface water storage just to stay on par with our currently available water supplies.

As you are all aware, actually developing new storage projects is much easier said than done. I testified before this subcommittee 2 years ago about the permitting challenges I encountered in building the Little Snake Supplemental Irrigation Supply Project (High Savery Project) in Wyoming. That project was built in less than 2 years, but took more than 14 years to permit. My experience with the High Savery Project showed me that cooperative efforts are important for moving projects through the National Environmental Policy Act [NEPA] and other permitting processes. On the High Savery Project, the lead Federal agency wasted a great deal of time making decisions on the project and at times seemed unable to make decisions. These delays not only postponed the project, they resulted in wasted time and money. I believe that State agencies (in my case, the Wyoming Water Development Commission, or WWDC) and local project sponsors should become cooperating agencies in the NEPA process if possible and if not, should be allowed to serve on the project NEPA interdisciplinary team. The bill provides for inclusion of States, at the State's discretion, at sec. 3(c). We believe the effect of this provision would be to provide equal footing for State agencies with all Federal agencies, including contributions to and evaluation of the unified environmental document (which includes NEPA) at sec. 3(b)(4).

Establishing working relationships with the agencies involved in the NEPA process and permitting is important to keep projects on schedule and to avoid costly delays and disagreements. It is impossible to eliminate all problems associated with permitting dam and reservoir projects, but good cooperation and communications between agencies and groups, with an understanding of each participant's expectations, will help in problem resolution. The primary reason the High Savery Dam was permitted and constructed is the persistence and perseverance of the Savery-Little Snake Water Conservancy District and the residents of the valley. The sponsor's and the State's staying power prevailed in the end.

Clearly, the existing procedures for developing additional water supplies need to be revised to make project approval less burdensome. By the time project applicants approach Federal agencies for permits to construct multi-million dollar projects; they have already invested extensive resources toward analyzing project alternatives to determine which project is best suited to their budgetary constraints. However, current procedure dictates that Federal agencies formulate another list of project alternatives which the applicant must assess, comparing potential impacts with the preferred alternative. These alternatives often conflict with State law. We appreciate that this subcommittee had explored opportunities to expedite this process and reduce the costs to the project applicant.

For these reasons, the Family Farm Alliance supports the *"Water Supply Permitting Coordination Act,* which authorizes the Secretary of the Interior to coordinate Federal permitting processes related to the construction of new surface water storage projects on Department of the Interior and Department of Agriculture lands and to designate the Bureau of Reclamation as the lead agency for permit processing. This "one-stop shop" bill is a concept we have long advocated for. We support the current bill, and appreciate the provisions in sec. 5(a) that ensure the "cooperating" Federal agencies, some with very different mission statements from the Bureau of Reclamation, must actually buy into the process and work with the lead agency to accomplish the goals and purpose of the legislation by directing strict adherence to the project schedule established by the lead agency (Reclamation), including the coordination of all Federal agency reviews under sec. 4(a)(3). The bill, in sec. 3(a) also provides broad authority and responsibility to the lead Federal agency to coordinate all Federal reviews related to a project. We believe this definition includes Fish and Wildlife Service responsibilities under the Endangered Species Act [ESA]. Under this definition, all facets of an ESA review would be included (biological assessments, incidental take statements, and section 10 permits, and likely section 7 consultations as well). We ask that additional clarity may be provided on inclusion of ESA related processes by adding the word "consultation" to the bill language.

Another concern relates to the high costs of environmental review. These types of reviews are expensive and often can be beyond the reach of most water associations. For example, the State of Wyoming via the WWDC would likely become a cooperating agency under this bill. The WWDC typically conducts many environmental, hydrologic feasibility studies/analyses to make certain that the project being studied has a good chance of successfully navigating the NEPA/permitting process. We recommend that provisions be made within the bill whereby Reclamation accepts sound scientific/technical studies for review whenever submitted by the applicant. These analyses could be incorporated in Reclamation's review and subsequently reduce review time and costs when complying with NEPA and other Federal environmental law/regulations.

Finally, we recommend that the bill include language with specific reference to non-Federal State and local projects that could be integrated with the operation of federally owned facilities. We want to ensure Reclamation is the lead agency in the case of permitting a non-federally built storage project that has a direct Federal nexus with a Reclamation project—i.e. Sites Reservoir (California)—where it will be integrated into the Central Valley Project operations but (as proposed by the local Joint Power Authority) remain a non-federally developed and owned facility.

The Family Farm Alliance will continue to work with Congress and other interested parties to build a consensus for improving the Federal regulatory and permitting process. A major reason the Alliance continues to push for improved water storage and conveyance infrastructure is not to support continued expansion of agricultural water demand (which is NOT happening in most places), but to mitigate for the water that has been reallocated away from agriculture toward growing urban, power, environmental and recreational demands in recent decades. If we don't find a way to restore water supply reliability for western irrigated agriculture through a combination of new infrastructure, other supply enhancement efforts, and demand management—our country's ability to feed and clothe itself and the world will be jeopardized. Thank you again for this opportunity to testify before the subcommittee, and I stand ready to answer any questions you may have.

Mr. MCCLINTOCK. The Chair is pleased to recognize Mr. Stuart Somach, Attorney at Somach, Simmons and Dunn, based in Sacramento, California.

Welcome back.

STATEMENT OF STUART L. SOMACH, ATTORNEY, SOMACH, SIMMONS, AND DUNN, SACRAMENTO, CALIFORNIA

Mr. SOMACH. Thank you, Mr. Chairman and Mrs. Napolitano, members of the committee. I apologize for my voice; I had some vocal chord surgery about 2 weeks ago, and it just takes time to heal. So I hope you can hear me as I address you.

My law practice focuses on water and environmental law, and in particular, it focuses on reclamation law, and always has. I have been practicing for about 35 years, and I practice in California, Ne-

vada, Oregon, Arizona. I have represented the State of Arizona, and I currently represent the State of Texas, all on matters related to reclamation and reclamation law.

I have reviewed all the legislation, and I think all of it is good, and I think it is appropriate, and I think that, in some form, that type of legislation needs to move forward.

I actually, parenthetically, noted Mrs. Napolitano's statement about Los Vaqueros Reservoir. That construction is actually on a second phase of the reservoir enlargement. I did all of the environmental permitting, the water rights, I negotiated the reclamation contracts associated with Los Vaqueros, and I agree that is a perfect example of the kind of project that can be done and can move forward. I do remember, however, that funding of that project was a significant issue. The first phase was funded primarily through bonds. Subsequent phases have also included bond money and also money that came from the Federal Government in the context of CALFED monies.

And I think that the bill that I am most interested in right now, which is Mr. Hastings' H.R. 3981, has a provision, I think, that will assist in what I believe to be one of the most significant impediments to single-purpose projects funded locally, and that is, quite frankly, the significant problems with the cost of funding that, unlike Metropolitan, smaller districts, particularly in the North, don't have the kind of base that will allow for the type of rates that could repay those types of loans. So that the alternative to having the Federal Government or the State government come in and pay for these facilities is to have some kind of a loan program at lower, perhaps, interest rates in order to facilitate the construction of those projects while still allowing repayment.

The early repayment provisions of H.R. 3981 I will tell you I have been personally interested in since I represented the Bureau of Reclamation in the late 1970s. It always seemed to me peculiar that there was no provision for early repayment. When I mentioned to my wife that I was going to be testifying here, and what I was going to be testifying to, she—and the Chairman mentioned the no-brainer quality of the early repayment provision—she was just astounded when I told her that, actually, you can't repay Reclamation loans. And her view—my view, quite frankly—is that early repaying a non-interest loan to the Federal Government has got to be a good deal. And critics of the so-called subsidy—and I don't want to get into that right now—but the easiest way to eliminate the so-called subsidy is to have people early repay.

And people will early repay. And, in fact, there is a history of that. And I note in my written testimony that I was very much involved in what became the Southern Oregon Bureau of Reclamation Repayment Act of 2005, and that came out of the set of facts that it was not unique to southern Oregon. It was a situation where one of my clients wanted to go public, and were told by their bonding entities that, because of SEC regulations, they would have to disclose all of the reporting requirements and limitations associated with reclamation law.

And luckily, we were able to work through legislation that allowed for the early repayment in that case. And I will say that the early repayment was not insignificant. This entity owned lands in

three Reclamation districts in southern Oregon. And the total amount of money that they came out of pocket for in order to early repay was $250,000, a quarter of a million dollars, which could then be shifted, under this legislation, as seed money for a storage fund.

This redirection of Federal dollars is also something I had been involved with. That was how we resolved, in Arizona, the dispute with the Federal Government, by redirecting dollars from repayment to other facility payment. Thank you very much.

[The prepared statement of Mr. Somach follows:]

PREPARED STATEMENT OF STUART L. SOMACH, ATTORNEY, SOMACH SIMMONS AND DUNN, SACRAMENTO CALIFORNIA

H.R. 3981—ACCELERATED REVENUE, REPAYMENT, AND SURFACE WATER STORAGE ENHANCEMENT ACT

Mr. Chairman and members of the committee, my name is Stuart L. Somach. I am an attorney with the law firm of Somach Simmons & Dunn, located in Sacramento, California. We represent clients in California, Arizona, Texas, Oregon and Nevada on a variety of issues and matters, including those involving water and the environment. I have testified before this committee, and other House and Senate committees, on numerous issues and legislation, including hearings dealing with the Coordinated Operations Agreement, the Endangered Species Act, the Central Valley Project Improvement Act, and various versions of so-called "CALFED" legislation. I also worked on legislation, which became the Southern Oregon Bureau of Reclamation Repayment Act of 2005 (Pub. L. 109–138). That legislation deals with issues similar to those that are presented in the instant legislation. Most recently, on June 4, 2012, I testified before this committee on a predecessor to the current legislation.

Prior to entering private practice in 1984, I represented the United States and the United States Bureau of Reclamation, first as an attorney within the Solicitor's Office in Washington, DC, and in Sacramento, and then as an Assistant United States Attorney and a Senior Trial Attorney within the United States Department of Justice. This representation included both transactional work, such as negotiation of Reclamation contracts, providing legal advice on the interpretation of various aspects of and questions about Reclamation law, as well as working on and advising the Bureau of Reclamation on "regulatory" compliance matters, including matters associated with the Reclamation Reform Act of 1982 [RRA]. My work in the United States Attorneys Office and with the Department of Justice involved representation of the United States in litigation involving the Bureau of Reclamation and Reclamation law.

Since entering private practice I have represented clients west-wide on a wide variety of issues associated with Reclamation law. This has included transactional work, as well as providing legal advice on various aspects of Reclamation law, including compliance with the provisions of the RRA. I have also litigated a great number of cases involving Reclamation law. For example, I intervened on the side of the United States on behalf of Reclamation Contractors West-wide in an attempt to defend the Bureau of Reclamation's rules and regulations implementing the RRA. I also represented clients before the Ninth Circuit Court of Appeals and the United States Supreme Court in *Orff* v. *United States of America,* Case No. 03–1566, which dealt with significant aspects and provisions of Reclamation law. I also represented the Central Arizona Water Conservation District in a significant piece of litigation challenging the way the Reclamation law was being applied to the Central Arizona Project [CAP]. Fundamental to that litigation and to its resolution was the CAP's repayment obligation and the allocation of funds once those dollars were repaid to the United States.

I am currently lead counsel for the State of Texas in an Original Action in the United States Supreme Court. *State of Texas* v. *State of New Mexico and State of Colorado,* No. 141 Original. That litigation involves the 1938 Rio Grande Compact and the Rio Grande Reclamation Project.

Matters dealt with in H.R. 3981 *"Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act"* have been of long-standing interest to me. How repayment is accomplished and the underlying policy issues associated with the repayment obligation are fairly fundamental to Reclamation law. I last grappled with these issues in 2004–2005 on behalf of clients in southern Oregon who wanted to take their business "public" through stock offerings.

The business involved the growing and selling of "gift fruit." Most of the fruit orchards were irrigated with non-Federal water, but some fields were located within irrigation districts that received water from Bureau of Reclamation facilities (or facilities that had been enlarged by the Bureau of Reclamation) and were thus subject to a repayment obligation and all of the reporting and other requirements of the RRA. The clients did not understand Reclamation law and, more importantly, because of the various SEC regulations, most, if not all, of the RRA requirements would need to be disclosed as part of the stock offering. The clients were advised that these disclosures would cause the stock to be under-valued because they held out the potential for those with large holdings to be forced to fill out the RRA repayment forms. This was complicated by the potential of institutional buyers holding stock in other companies that were subject, in some way, to Reclamation law and the reality that stocks are bought and sold every day and the impossibility of attempting to keep up with the reporting requirements under those circumstances.

In attempting to resolve this problem I exhausted every possible administrative remedy. Some within Reclamation were very helpful, but in the end they could not provide a solution. As a consequence, we worked on a legislative solution that ultimately was enacted in Southern Oregon Bureau of Reclamation Repayment Act of 2005 (Pub. L. 109–138). That legislation, of course, provided for early repayment by districts or individuals within districts of their repayment obligations. This, then, allowed relief from many provisions within the RRA, including the reporting requirements which were plaguing my clients.

At the time we were assisting in the development of Public Law 109–138, I argued that the provisions should not be limited to southern Oregon, but should be applied on a west-wide basis. For various reasons not at all related to the question of repayment, there was a great deal of resistance to this broader effort. Because my clients had very real and immediate needs, I did not press the issue, and we were able to obtain needed relief through Public Law 109–138.

Since that time I have represented numerous clients affected by the various reporting requirements associated with the RRA. In my view, these requirements add burdens that increase operating and other costs without, in most cases, providing a material benefit to anyone. In one example, when a landowner and the United States had entered into a water right settlement contract, RRA requirements were triggered because 600 acre feet of water out of an in excess of 50,000 acre feet of "settlement" contract water were denominated as reclamation project water. The ability to early repay the dollars associated with these 600 acre feet of water would greatly benefit the landowners involved and provide relief from many of their RRA obligations.

I believe that reform of the repayment provisions of Reclamation law is needed and is good policy. In this context, for the most part, the United States has already expended the capital costs for Federal reclamation projects and facilities. In most cases those expenditures were made decades ago. Moreover, the irrigation component of these repayment obligations are interest free. Indeed, there has been a great deal of criticism about this so-called "subsidy." While I could spend pages explaining and supporting the policy decisions behind this "subsidy," the fundamental reality is that if the Reclamation Contractor is able to "pre-pay" or "early pay" its capital reimbursement obligation, this "subsidy" is eliminated. For any number of reasons, therefore, early payment should be facilitated and encouraged. H.R. 3981 *"Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act,"* of course, does this.

I also believe that the provisions of H.R. 3981 *"Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act,"* that deal with the establishment of a Water Storage Account are good additions to the bill. I do not think that any rational person can argue that additional surface water storage is not needed in the West. The water that would have been available from additional water storage facilities would certainly be of great value in California right now.

In addition to the obvious environmental issues that need to be addressed in developing new surface water storage, issues associated with costs and financing loom large as impediments to putting these facilities online. Providing funding through what is, in essence, the recycling of Federal dollars, is an efficient way to begin to tackle this problem. Proceeding in this manner, among other things, allows non-Federal entities to obtain financing for water storage projects without the need for the United States to appropriate new Federal dollars for this purpose. It also insures that dollars that were once invested to assist in water development continue to work for that purpose.

This type of funding mechanism is not new. I was involved in a similar re-direction of repayment dollars associated with the Central Arizona Project (Arizona Water Settlements Act of 2004, Pub. L. No. 180–451, 118 Stat. 3478) which has

worked very well and has served to advance broad public policy goals, again without the need to appropriate new dollars for this purpose.

The provisions of H.R. 3981 *"Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act"* take into account numerous important aspects of Reclamation law in an appropriate fashion. Among these are:

- Allows for the conversion of certain contracts that are or are in the nature of "water service contracts" to "repayment contracts." The use of water service contracts, as opposed to repayment contracts, is, for example, common in the Central Valley Project. It is of note that most, if not all, of these water service contracts provide for their conversion to repayment contracts. However, these contractual provisions provide no practical way for this to occur. The draft legislation provides this needed detail.
- Adds the concept of "accelerated repayment" or "repayment" without penalty to the early full payment of the repayment obligation.
- Captures mechanisms for the collection of capital costs incurred after the date of the contract or appropriate "rate schedule" on an expedited basis up to $5,000,000, with alternate means to insure repayment of amounts in excess of $5,000,000.
- Eliminates the benefit of power revenues to those who proceed under the provisions of this legislation.
- Allows the Contractor to determine how best to pre-pay, if it uses alternate financing mechanisms to do so.
- Insures that the early or accelerated prepayment will not affect the repayment obligations of any other Contractor or any other obligations among or between the United States and Contractors.
- Provides an adjustment in case this is needed once a project's "final cost allocation" is completed.
- Insures continued compliance with Reclamation law and relevant RRA requirements, but eliminates various limitations and requirements, including the reporting requirements of the RRA.
- Insures that all costs, including operation and maintenance costs, properly payable but not otherwise captured in the prepayment or accelerated payment, remain an obligation that must be fulfilled by the Contractor.
- Provides that prepayment dollars be redirected and deposited into a Surface Water Storage Account to fund or provide loans for the construction of surface water storage.
- Allows for cooperative agreements between the Secretary and water users' associations to facilitate funding and construction of surface water storage, thereby providing needed flexibility with respect to surface water storage development.
- Provides for repayment of the dollars loaned from the Surface Water Storage Account back into that account so that these funds can be used again for the purpose of facilitating financing for surface water storage projects.

I believe all of these provisions to be appropriate. Enactment of this legislation will provide a comprehensive means for those who desire early repayment to do so. It, of course, also avoids the "piecemeal" legislative process that has been used in the past. It also provides a mechanism to assist in the financing and development of surface water storage without adding new Federal budget related pressures.

I appreciate the opportunity to testify here today and would be happy to answer any questions you might have now, or to provide additional information if requested.

Mr. MCCLINTOCK. Thank you, Mr. Somach. The Chair is next pleased to recognize Mr. Steve Ellis, Vice President for Taxpayers for Common Sense, based in Washington, DC.

STATEMENT OF STEVE ELLIS, VICE PRESIDENT, TAXPAYERS FOR COMMON SENSE, WASHINGTON, DC

Mr. ELLIS. Thank you. Good morning, Chairman McClintock, Ranking Member Napolitano, members of the subcommittee. Thank you for the invitation to testify on the Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act, and the subcommittee's discussion draft to create a surface water storage enhancement program. I am Steve Ellis, Vice President of Tax-

payers for Common Sense, a national, non-partisan budget watchdog.

And, before I begin, Chairman McClintock, we may disagree a little here, but TCS appreciates your strong leadership that you have exhibited in tackling wasteful subsidies, and we look forward to working with you on that again in the near future.

The first half of H.R. 3981 is virtually identical to a committee discussion draft that I testified on in June 2012. The issues that I raised at that time, both positive and negative, remain today. In fact, the Government Accountability Office is studying some of those issues. And when that assessment is released—hopefully in the next couple of months—some questions regarding the number of potential contractors benefiting from this legislation will be answered, and there will be case studies of prepayment deals that have already occurred, such as the one that Mr. Somach discussed.

I would like to concentrate my testimony on issues presented by the new surface water storage programs created in H.R. 3981, and the discussion draft. But, before going to that, I would like to make some brief, overarching comments about Congress revisiting Reclamation water contracts and accelerated repayment legislation.

We agree that Congress should take a fresh look at the underlying contractual relationships between Federal taxpayers and the recipients of water from Federal reclamation projects across the 17 Western States. This century-old goal of using subsidized water projects and other means to encourage settlement and development of arid western lands has been met and exceeded. But current epic drought conditions in California underscore the challenge created by these century-old subsidies, and the questionable policy perpetuating them.

The connection between the price of a commodity like water and the level of demand and efficiency of use of such a commodity is based on—based relative pricing is well documented. It is time for Congress to examine whether taxpayer subsidies should be ended in favor of more market-based pricing, where prices would represent the true cost of developing and delivering water supplies, and send price signals that encourage efficiency and use west-wide.

On the accelerated repayment legislation, we are concerned about the one-size-fits-all approach. Past legislation addressing project prepayment has involved a congressional judgment regarding project-specific changes. This legislation abdicates congressional oversight, leaving the decision regarding repayment changes entirely in the hands of water users. For larger projects, this might lead to a confusing variation among the water recipients in a single project or unit of a project.

Congress, in 1982, expressly prohibited accelerated prepayment of capital, since it could undo the policy goal of preventing large-scale operations from gaining access to fully subsidized water. The Reclamation Reform Act of 1982 included numerous pricing reforms to protect taxpayers, discourage large-scale operations from receiving subsidies intended for small farms, encourage increased water conservation, and increase revenues to the government. H.R. 3981 would undo the accelerated prepayment prohibition, while failing to protect the taxpayer or mitigate this dramatic change in Federal law.

A few questions should be answered. How will projects be operated, going forward? Does this draft contemplate a permanent commitment to water delivery to existing contractors without renegotiation of key contract terms? Specifically, what happens to the negotiation of water quantity terms as shorter-term water service contracts become permanent contracts, simply by conversion and prepayment.

Again, I am not against this legislation specifically, I just want—think there are some important questions that the Congress needs to address.

As I noted earlier, the major difference between the current accelerated repayment legislation and the discussion draft from 2012 is this creation of the surface water storage enhancement program and reclamation surface storage account, which is also the subject of the discussion draft legislation that is being considered at this hearing. Together, these provisions would direct a portion of the revenue from prepayment of contracts and $400 million a year for 5 years into a separate, non-appropriated account in the Reclamation fund.

Taxpayers for Common Sense strongly opposes this approach to funding water storage projects. Especially with the country running deficits in excess of $500 billion and more than $17 trillion in debt, no spending should simply be put on autopilot. Furthermore, the drafts again fall into the trap of requiring repayment in accordance with existing reclamation law. Any investments in new water storage projects should be structured to not subsidize water use based on the 1902 reclamation model.

In addition, aside from general-purpose statements, neither piece of legislation establishes any criteria or metrics to evaluate what projects should be prioritized for construction. These bills require no mandated cost benefit analysis, no directions or limitations on what the Bureau can consider. As drafted, this account appears to be little more than a slush fund for the administration, a $2 billion slush fund—a more than $2 billion slush fund, in fact.

Water storage projects should be subject to vigorous administrative and congressional oversight. TCS has long advocated that Congress establish a prioritization system with criteria and metrics that would objectively determine what projects should be authorized and funded. With this type of system, Congress could hold the administration accountable, adjust the metrics and criteria necessary, and not cede power to the administration or relapse into ear-marking funds on the basis of political muscle, rather than project merit.

Taxpayers for Common Sense supports investing in our country's infrastructure in a targeted, prioritized way. We urge the committee to re-evaluate the legislation and address the issues and questions raised today.

Thank you. And again, thank you for the opportunity to testify on this legislation. I would be happy to answer any questions you might have.

[The prepared statement of Mr. Ellis follows:]

PREPARED STATEMENT OF STEVE ELLIS, VICE PRESIDENT, TAXPAYERS FOR COMMON SENSE, WASHINGTON, DC

H.R. 3981—ACCELERATED REVENUE, REPAYMENT, AND SURFACE WATER STORAGE ENHANCEMENT ACT AND A DISCUSSION DRAFT OF LEGISLATION CREATING SURFACE WATER STORAGE ENHANCEMENT PROGRAM

Good morning Chairman McClintock, Ranking Member Napolitano, members of the subcommittee. Thank you for the invitation to testify on the Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act, which would enable certain Reclamation water contractors to accelerate repayment of their existing Bureau of Reclamation contracts. I will also comment on the subcommittee's discussion draft to create a Surface Water Storage Enhancement Program. I am Steve Ellis, Vice President of Taxpayers for Common Sense, a national non-partisan budget watchdog.

With one notable exception, the accelerated repayment legislation is virtually identical to a committee discussion draft that I testified on in June 2012. The issues that I raised at that time—both positive and negative—remain true today. In fact, the Government Accountability Office is studying some of those issues and when that assessment is released—hopefully in the next couple of months—some questions regarding the number of potential contractors benefiting from this legislation will be answered and there will be case studies of prepayment deals that have already occurred.

The notable exception and the discussion draft legislation creating a Surface Water Storage Enhancement Program present a new set of questions. But before going to that, I would like to make some overarching comments about Congress revisiting Reclamation water contracts and comments on the accelerated repayment legislation.

REVISITING RECLAMATION WATER CONTRACTS

With regard to the overarching question, we agree that Congress should take a fresh look at the underlying contractual relationships between the Federal taxpayers and the recipients of water from Federal Reclamation projects across the 17 Western States. As Taxpayers for Common Sense and numerous government agencies and outside experts have frequently observed, the heavily subsidized Reclamation program has often led to unintended impacts in the management and use of scarce western water supplies. Those impacts extend far beyond the impacts on the Federal treasury, which have also exceeded anything that could have been contemplated at the creation of the program more than a century ago.

It is amply clear that the policy justifications initially provided to launch the Bureau back in 1902, and even those used to justify various revisions of the Reclamation program in more recent decades, have often ceased to make sense under modern conditions. For example, it is entirely clear that the goal of using subsidized water projects and other means to encourage settlement and development of arid western lands back in the early 1900s has been met and exceeded. California, for instance, has more than 30 million residents, a large and vibrant agricultural industry, and one of the largest economies in the world. Perpetuating Federal taxpayer subsidies for California agribusiness based on the original Reclamation model ignores 100 years of history and today's reality of water shortages and Federal deficits. And to the extent that the legislation under consideration today could be taken to lock-in the water allocations made by existing contracts, that 100-year-old thinking could determine California's water use for centuries.

Current conditions in California underscore the challenge created by these century-old subsidies, and the questionable policy of perpetuating them. California is suffering from a drought of historic proportions. Water availability is so limited that the State Water Project, which runs parallel to Reclamation's Central Valley Project, has announced that it will be able to make no water deliveries this year. When anything, be it water or widgets, is this scarce, subsidizing its use makes little economic sense. Market forces will normally lead to price increases and reduced use—creating new subsidies or perpetuating old ones will simply lead to increased demand and distorted allocation.

The time has come to reexamine the interest subsidy, and other intended or unintended subsidies, embedded in the Federal reclamation program. Water scarcity in the arid West and the likelihood of further shortages are driving numerous changes in State and local water policy. The connection between the price of a commodity like water and level of demand and efficiency of use of such a commodity based on relative pricing is well documented. It is time for Congress to examine whether taxpayer subsidies should be ended in favor of more market-based pricing, where prices

would represent the true costs of developing and delivering water supplies and send price signals that encourage efficiency in use west-wide.

ACCELERATED REPAYMENT

On the accelerated repayment legislation, we are concerned about the one-size-fits-all approach to complicated issues that vary from water service contractor to water service contractor. Past legislation addressing subsidies and project prepayment has involved a congressional judgment regarding universal rules that would affect all Reclamation project subsidies, or project-specific changes. This legislation creates a system that abdicates congressional oversight leaves the question of the breadth of repayment changes entirely in the hands of water users, who could opt in. For larger projects this might lead to a confusing variation among the water recipients in a single project or unit of a project.

Apart from this basic policy question, the legislation provides pluses and minuses for the taxpayer. At the most basic level, taxpayers would be receiving their repaid cash sooner. In my testimony from last Congress, I also noted that the bill appears to eliminate an outdated and often-criticized subsidy by which power customers have cross-subsidized irrigation based on a perceived "inability to pay" by those irrigation users. This old loophole in the Reclamation program allowed costs to be shifted away from those receiving valuable irrigation water, instead of requiring them to conserve more, transfer some of their water supplies to other purchasers, or otherwise make necessary adjustments so they can repay their allocated costs. On closer reading of the language in the current draft, the outcome rests on what cost allocation is stated in the contract—this should be clarified to state simply that no power subsidy will be allowed.

One the other hand, the bill completely fails to eliminate the largest and most broadly criticized subsidy of all: the interest-free repayment of the capital investments. In fact, rather than finally collecting interest from irrigators who have overly benefited from this huge subsidy program, the discussion draft appears to lock in this subsidy permanently. It then compounds the subsidy by reducing the amount to be repaid by calculating it based on "net present value," as if the loan program had represented true market-based financing by private sector entities and had not already provided major benefits to recipients. Considering that most water contractors are local water districts entitled to Federal interest-free financing, the taxpayers will end up subsidizing them again through tax-free bonds if they finance the lump-sum prepayment.

The bill appears to offer various other benefits to water contractors, such as permanently waiving all Federal acreage limitations intended to limit taxpayer subsidies for large agribusinesses. The Reclamation program was initially intended to benefit small family farms of 160 acres or less. After numerous documented abuses of that limit Congress expanded the limit to 960 acres in the 1980s, while insisting on firmer enforcement and higher water prices to farms above that size. This draft would eliminate the acreage limit altogether for those opting for pre-payment.

Congress in 1982 expressly prohibited accelerated prepayment of capital, since it could completely undo the policy goal of preventing large scale operations from gaining access to fully subsidized water. The Reclamation Reform Act of 1982 [RRA] included numerous pricing reforms to protect taxpayers, discourage large scale operations from receiving subsidies intended for small farms, encourage increased water conservation, and increase revenues to the government. The proposed legislation would undo the accelerated prepayment prohibition while failing to include any corresponding reforms to compensate or otherwise protect the taxpayer or mitigate this dramatic change in Federal law.

Finally, in the case of municipal and industrial Reclamation contracts where some modest interest rates have been charged over the past several decades, it is not completely clear how the "net present value" formulation in the bill will handle the interest charges that would otherwise be paid. As we read the legislation, some of that interest that would otherwise have been paid to the government could be lost. In addition, for the largest and therefore wealthiest of the farm operations in the Reclamation program, those who were required by Congress in 1982 to start paying interest charges for all water delivered above the 960 acres, the prepayment of capital costs and elimination of all acreage limits could mean that the taxpayers permanently forgo those interest payments. The large-scale operations would get to keep their full supply of subsidized water, and the intended protections for smaller businesses with less than 960 acres would be removed permanently without any countervailing benefits or new protections.

At the June 2012 hearing, I raised several questions that should be answered before the accelerated repayment legislation should move forward. Some or all of these

may be answered in the ongoing GAO study, and I would encourage the committee to get the benefit of their insight before moving this legislation forward. The questions I raised were:

- How many projects in the Reclamation Program would be affected? Under Reclamation law, water is most often delivered to irrigators under section 9(d) contracts, which include terms to repay allocated project costs (without interest) or under section 9(e) contracts, which provide water based on the cost of service on an interim basis before project completion. The bill refers to "water service contracts", which is a term of art in Reclamation law and is defined in the draft bill to refer only to section 9(e) of the 1939 Reclamation Act (i.e. for irrigation water). But only a limited number of Reclamation projects actually use 9(e) contracts instead of the more widespread 9(d) repayment contracts.
- What will be the likely effect of the bill on the Central Valley Project in California? The CVP is the largest Reclamation Project and the site of some of the largest farms and biggest subsidy controversies in the program. But it also has one of the largest concentrations of 9(e) contracts. Would the bill enable 9(e) contractors to convert to 9(d) contracts, accelerate payment of capital, and buy their way out of all acreage limitations by taking advantage of current commercial borrowing rates that are at all-time lows?
- How will projects be operated going forward? Does this draft contemplate a permanent commitment to water delivery to existing contractors without renegotiation of key contract terms?
- Specifically, what happens to the negotiation of water quantity terms if shorter-term water service contracts become permanent contracts simply by conversion and prepayment? In the CVP, the Reclamation program is faced with over-appropriated rivers and intense competition for supplies. When contracts expire, the government has the opportunity to reduce the quantity term of the new renewal contracts and, in fact, the Bush administration did just that when some of the CVP contracts expired in recent years. But when will such right-sizing of contract amounts occur if there is no such negotiation for renewal contracts and instead existing contracts are simply converted to permanent agreements? While the "reasonable use" requirements of Federal and State law allow such reductions, the Bureau of Reclamation rarely (if ever) has used that authority to reduce the quantity term in an existing contract.

SURFACE WATER STORAGE ENHANCEMENT PROGRAM

As I noted earlier, the major difference between the current accelerated repayment legislation and the discussion draft from 2012 is the creation of the Surface Water Storage Enhancement Program and the Reclamation Surface Storage Account, which is also the subject of the discussion draft legislation that is being considered at this hearing.

Together, these provisions direct a portion of the revenue from prepayment of contracts and $400 million per year for 5 years into a separate non-appropriated account in the Reclamation Fund. Taxpayers for Common Sense strongly opposes this approach to funding water storage projects.

Any revenue generated by pre-payment of contracts should be returned to the Treasury and should be subject to congressional oversight and appropriation. Especially with the country running deficits in excess of $600 billion and a more than $17 trillion debt, no spending should be simply put on auto-pilot. Furthermore, the drafts again fall into the trap of requiring repayment in accordance with existing Reclamation law. Any investments in new surface water storage projects should be structured to not subsidize water use based on the 1902 reclamation model.

In addition, aside from general purpose statements, neither piece of legislation establishes any criteria or metrics to evaluate what projects should be prioritized for construction. There is no mandated cost-benefit analysis, and no direction or limitations on what the Bureau could consider. As drafted this account appears to be little more than a slush fund for the administration. A more than $2 billion slush fund.

Water storage projects should be subjected to vigorous administrative and congressional oversight. After a feasibility study recommendation, Congress should make the decision whether or not to authorize the projects and then whether to appropriate funds for them. TCS has long advocated that Congress establish a prioritization system with criteria and metrics that would objectively determine what projects should be authorized and funded. With this type of system Congress could hold the administration accountable, adjust the metrics and criteria as necessary, and not cede power to the administration or relapse into earmarking funds on the basis of political muscle rather than project merit.

Taxpayers for Common Sense supports investing in our country's infrastructure in a targeted, prioritized way. We urge the committee to re-evaluate the legislation and address the issues and questions raised today. Again, thank you for the opportunity to testify on this legislation and I would be happy to answer any questions you might have.

Mr. MCCLINTOCK. All right, thank you for your testimony. The Chair is next pleased to introduce Mr. Chris Hurd of Circle G Farms from Firebaugh, California, to testify. Welcome to Washington.

STATEMENT OF CHRIS HURD, CIRCLE G FARMS, FIREBAUGH, CALIFORNIA

Mr. HURD. Good morning, and thank you so much, Chairman McClintock, Ranking Member and members of the committee, and all of you that have gathered. I bring a message today from my family farm. I come to talk about the hardship in California. I come to endorse the storage, the proposed bill that we have before us. And I come to lay at your need for leadership in fixing discretionary changes in the existing law and helping us continue to survive in the West.

I am a fourth-generation family farmer on the west side of the San Joaquin Valley in California, farming almonds, pistachios, row crops. I am entirely operating under the Central Valley Project for 32 years. My wife and three sons and I are involved heavily in it, daily. Today I represent the Family Farm Alliance, as does Pat O'Toole, my friend, which is a grassroots organization with one mission: that is to keep the water going, secure and affordable, to western farms and ranches.

H.R. 3980 would go a long way to helping us secure some additional storage, flexibility for the future. And we strongly support that. Storage is what built the West, but it has been skewed from its original intent. Certainly Congressman Hastings put it very well, that things have changed. Maybe we need to review those thoughts.

In California, we have a current drought, but we have had them before, such as 1977, 1978, and a 5-year drought in 1987 to 1992. Now, the last 25 years have seen layers of regulations taking our contracted water off of the land. We started last year, 2012, 2013, with above-average storage. But that system was operated to drain the water for fish and water-quality issues. Today there is no water in California in the system storage. And, even if it rains, it won't help us if the regulatory crisis isn't fixed, and the system is to be run with human imbalance consideration.

We cry out for the leadership needed, non-partisan. Thousands of us California farmers have invested millions of dollars in conservation. Family farms, 5,000, 10,000 of us out there, are working the land to stay in business. We are aware of the conservation, we live it day to day.

The water bill on my ranch has gone, in 5 years, from $300 an acre to $1,800 an acre. The months of July, August, and September see 10 to 15 truckloads a minute going by my ranch, which borders Interstate 5, carrying grapes, almonds, pistachios, onions, garlic, row crops, 300,000 to 400,000 tons every 24 hours, feeding the world from safe, reliable food that we are producing.

Certainly our country must be proud of our production, which equates to the U.S. consumers only spending 7 to 8 percent of their disposable income for food, while our neighbors overseas are spending 20, 30, and 40 percent for their food supply.

Hardship abounds in California right now. Most irrigation districts are facing a zero allocation for 2014. Schools are closing. My wife, a reading specialist, was laid off of a small community school, and the school was closed. Vendors are going broke. Tens of thousands of people are unemployed at the moment. There are food lines forming. This is not a reality show; this is happening.

Federal agencies implementing ESA and the Clean Water Act must be held accountable, under the law, to help move more water. The cavalier attitude of the agencies implementing the ESA is ruining the West, currently. Are we so arrogant or foolish that we think depression, mass unemployment, and food shortages cannot happen in this country again, that we will always be able to produce the food, enough food for an exploding population? Maybe we should ask our parents or grandparents, who helped build the current systems that we so enjoy.

Bluntly, I will say this. Putting ideology and partisanship ahead of public service is failure. California needs its elected representatives in Congress to provide the leadership, show courage and vision, and fix the problem now. Is the United States going to be a viable Ag producer in a volatile world, or not? Stop the bickering and serve the people now. Thank you, and I would appreciate any questions. I stand ready to speak with you. Thank you.

[The prepared statement of Mr. Hurd follows:]

PREPARED STATEMENT OF CHRIS HURD, CIRCLE G FARMS, SAN JOAQUIN VALLEY FARMER AND FAMILY FARM ALLIANCE BOARD MEMBER, FIREBAUGH, CALIFORNIA

DISCUSSION DRAFT, TO AMEND THE SECURE WATER ACT OF 2009

Chairman McClintock, Ranking Member Napolitano and members of the subcommittee:

Thank you for the opportunity to appear before you to offer comments on the importance of water storage projects and related legislation intended to provide new opportunities to develop these projects. My name is Chris Hurd, and I serve on the board of directors of the Family Farm Alliance. The Alliance advocates for family farmers, ranchers, irrigation districts, and allied industries in 17 Western States. The Alliance is focused on one mission—to ensure the availability of reliable, affordable irrigation water supplies to western farmers and ranchers.

Water users represented by the Family Farm Alliance use a combination of surface and groundwater supplies, managed through a variety of local, State, and Federal arrangements, to irrigate productive agricultural lands in the West. For the most part, however, many of our members receive their primary irrigation water supplies from the Bureau of Reclamation (Reclamation). In essence, we are Reclamation's customers. western family farms and ranches of the semi-arid and arid West—as well as the communities that they are intertwined with—owe their existence, in large part, to the certainty provided by water stored and delivered by Reclamation projects. That is why we support the discussion draft bill under consideration today that would amend the Secure Water Act of 2009 to authorize the Secretary of the Interior to implement a surface water storage enhancement program, and for other purposes.

I am a managing partner of Circle G Farms in California's San Joaquin Valley. My 1,500 acre family farm operation produces almonds, pistachios and row crops. I graduated from Cal Poly San Luis Obispo in 1972 with a degree in mechanized agriculture. I am president of the San Luis Water District and a long-time board member of the Family Farm Alliance. My wife Anne and I have three sons.

The increasingly complex Federal regulatory structure, and the increasingly expensive and protracted processes which this structure encourages, makes obtaining and sustaining water supplies increasingly difficult for both agricultural and munic-

ipal users alike. For the farmer or rancher, the current Federal water allocation and reallocation schemes in some areas of the West often create chaotic economic conditions, a sense of disillusionment and resignation, and uncertainty. Nowhere is the uncertainty of water supplies greater than where I live, in California's San Joaquin Valley (Valley) from the Federal Central Valley Project [CVP].

Severe water shortages caused by the combination of Federal fisheries restrictions and drought on water supplies to the western side of the Valley forced hundreds of thousands of acres of farmland to be fallowed in 2009. University of California experts estimate that the combined effects of these restrictions on the water supply have cost Central Valley agriculture nearly $1 billion in lost income and more than 20,000 lost jobs. In 2009, water users that depend on the Federal Central Valley Project [CVP] received only 10 percent of the water they contracted to receive, the lowest allocation in the history of the project. We have calculated that without these Federal restrictions, the allocation would have been 30 percent. The U.S. Department of the Interior increased the allocation of water for south-of-Delta CVP agricultural water service contractors in 2010 to a whopping 25 percent of our contract. Last year, that same allocation was 20 percent of our contract. This year, even if we end up with average hydrologic conditions this winter, we face a ZERO allocation, and implementation of Federal laws such as the Endangered Species Act [ESA] and Clean Water Act [CWA] is a primary reason for this grim scenario.

Certainty in western water policy is essential to the farmers and ranchers I represent, and that is why a suite of water conservation practices, improved water management, water transfers, and other demand reduction mechanisms must be balanced with proactive and responsible development of new water infrastructure. New storage projects must be part of that mix, and creative ways to finance those projects are needed.

Title II of the Rural Water Supply Act of 2006 (Pub. L. 109–451) authorized a loan guarantee program for rebuilding and replacement costs of water infrastructure within Reclamation that would leverage a small amount of appropriated dollars into a large amount of private lender financing available to qualified Bureau-contractor water districts with good credit. In other words, the Congress has given the authority to Reclamation to co-sign a loan to help their water contractors meet their contract-required, mandatory share of rebuilding and replacement costs of federally owned facilities. Given this scenario, it is incredible that Reclamation loan guarantees, a long-awaited critical financing tool for water users across the West, are now being held up because of incorrect interpretations of Federal policy by the Office of Management and Budget [OMB].

The Family Farm Alliance will continue to work with Reclamation and OMB to implement this program and to investigate opportunities to develop similar loan guarantee programs that can help fund new water infrastructure projects. We stand ready to work with the committee and will look for its support as we work with the administration to find ways to leverage funding to meet even more needs for both aging and new water infrastructure projects.

The discussion draft bill provides another creative financing mechanism. It would amend the Secure Water Act of 2009 to authorize the Secretary of the Interior to implement a surface water storage enhancement program. Such a program does not exist today, yet demand for new sources of water from storage has grown tremendously over the past two decades. The bill would authorize the Secretary to construct surface water storage and to enter into cooperative agreements with water users associations for the construction of surface water storage that would benefit agriculture and other water-dependent sectors of the economy in the West. This draft bill would establish in the Treasury of the United States an account to be known as the 'Reclamation Surface Water Storage Account' which would be used to pay for surface water storage projects over a 4-year period using a total of $400,000,000 of revenues that would otherwise be deposited in the Reclamation fund. By making these funds available for investment in new surface water storage projects, to be repaid over time, the growing needs for new water supplies in the West could be met while protecting the jobs and communities so dependent on water for their very existence.

We support this discussion draft bill, although additional detail would improve it. One of the areas that require further clarification include the terms of repayment, and the manner in which projects would be selected and how funds are allocated. Also, the bill is not clear on who would get funding support and on what basis the Federal agency can or will determine who receives said support. Possibly, the bill could direct the Bureau of Reclamation to develop a proposal on how they would administer funding and loans made available by the bill, working with the contractors and storage project proponents, and report back to Congress on a final set of program policies and guidelines within a set period of time.

As a side note, the Board of Directors of the Family Farm Alliance in 2005 launched an aggressive and forward looking project that pulled together a master data base of potential water supply enhancement projects from throughout the West. While many of these supply enhancement projects include projects like canal lining and piping, reconstruction of existing dams, and regional integrated resource plans, the report also identifies some potentially beneficial new multipurpose surface storage projects. The benefits from these projects include providing certainty for rural family farms and ranches, additional flows and habitat for fish, and cleaner water and energy. We would be happy to utilize this tool to assist the subcommittee in developing a quick assessment that might provide a sense of which proposed storage projects in West are ready to apply for this funding, and how far the anticipated funding amounts would stretch. While making up to $400 million available to build new projects is a great start, realistically we may be only able to fund a few new projects. But, we believe this is a significant beginning toward advancing new surface water storage projects in many areas of the West.

People like me who live and work on the west side of the San Joaquin Valley have disproportionately borne the costs associated with actions under the Endangered Species Act [ESA] to protect fish species that occupy the Sacramento-San Joaquin River Delta. These costs are astounding. And they extend well beyond the farmer's gate. These costs extend to our local communities—impacting the tax base, unemployment and social support programs—all the way to the consumer in the form of higher prices for food. The bill, by allowing for the expansion of surface storage by financing the construction of new water storage projects, could reduce these high costs associated with reallocating water away from agriculture and municipal needs by restoring certainty to critical irrigation and city water supplies and meeting environmental needs in the process.

For instance, the costs for water supplied by the Bureau of Reclamation to irrigate orchards on my farm near Firebaugh over the last 5 years have grown from $300 per acre to $1,800 per acre, per year. We are facing a potential ZERO water allocation this year. For a farmer trying to make business decisions, some of which may implicate family, farmworkers, neighbors and community for the next 30 years, this is an impossible situation. It's the kind of thing that leads to extreme financial and emotional stress felt by farmers who don't know if they will still be in business in 5 years. It becomes harder and harder to simply hang on when our most important input, our irrigation water, has become the biggest unknown in our farming operations.

Some of the real costs of these decisions are on the people in our community: Schools are closing, vendors are going broke, tens-of-thousands of workers are unemployed, food lines are forming, and family relationships are strained. In my situation, eight people who would otherwise be employed now don't have work because I could not hire them due to the lack of water. That may not seem like much, but mine is one of almost 4,000 farms in the San Joaquin Valley suffering from chronic water supply shortages due in part to Mother Nature this year, but also due to regulatory decisions made by the Federal agencies in previous years. In big cities, maybe these numbers aren't considered important, but in our small, rural, often disadvantaged communities, where one of four workers is unemployed, they are vital. Towns, once thriving, are now shells.

Will this discussion draft bill help my farm this year? No, it will not; but we must consider how many droughts we need to go through before our ability to grow our Nation's food supply is imperiled beyond repair. We must start managing water in California (and across the Western United States) to meet the future needs of humans and their communities, and not just the environment. That includes better managing our current water supplies for multiple needs (including agriculture), and by developing new storage projects that will allow the greater flexibility we will need to meet the challenges of a drought year like this one in the future. It also means applying the Federal discretion allowed by the Federal Endangered Species Act [ESA] and other Federal laws in a way that maximizes water supply for human uses without imperiling species. The ESA was also not intended to avert environmental disaster by creating other disasters. The ESA is a reality, but the manner in which it is being applied is not utilizing any of the flexibilities inherent to the act, or in consideration of the collateral human disasters that are being caused through such Federal decisionmaking. Lawmakers and policymakers must use their leadership positions to help give agency implementers the tools to understand that it's not all just about mathematics and science, that there are truly human costs associated with their decisions. We believe there is flexibility built into the ESA that must employed in situations like ours that do the least harm to our communities.

Are we so arrogant or foolish that we think depression, mass unemployment and food shortages cannot happen here again; that we will always be able to produce

enough food for an exploding global population? Maybe we should ask our grandparents and our parents, whose hardships led to the foresight to build our existing reservoirs, canal systems and other infrastructure we enjoy today, and upon which our quality of life depends, whether or not these costs are justified. Our generation must step up and continue to develop our water resources to better meet our future needs, including those of our environment, and this water storage discussion draft bill would go a long way in helping us in that endeavor. Thank you for the opportunity to testify today, and I would stand for any questions the subcommittee may have.

Mr. MCCLINTOCK. Thank you for your testimony. We will now move to questions of witnesses. Each of the Members is also bound by the 5-minute limit. And I will begin with Mr. O'Toole.

You mentioned that, on a dam in your neck of the woods, it took 14 years to go through the paperwork process, and only 2 years to actually construct the dam. Did I hear that correctly?

Mr. O'TOOLE. Yes, sir, that is accurate.

Mr. MCCLINTOCK. What does that do to the cost of the dam?

Mr. O'TOOLE. Well, as I said in my testimony, not only did the costs increase appreciably, but the project itself went from 50,000 to 25,000 acre-feet. And so, to meet the Federal specifications that I think you are addressing in this bill in a much more user-friendly way, where the State actually can build what it needs to build, it is not only a money cost, it is a time cost.

And, as I said in my testimony, the ability, as soon as it was built, to have those irrigators be able to have late water in a drought was just crucial, and at the same time maintaining a vibrant fishery. So, I think that the answer to your question is it is a money deal.

In Wyoming, we created—let me expand just a little bit. We had two 50,000 acre-foot reservoirs that are still authorized in Congress that were not funded. And that was in the 1970s that changed. So the 14 years doesn't include all that time.

Mr. MCCLINTOCK. Well, as I said, we have a 2.3 million acre-foot dam in Auburn——

Mr. O'TOOLE. Yes, sir.

Mr. MCCLINTOCK [continuing]. That was federally authorized, and was actually half constructed before it was canceled in the mid-1970s, during that same period when our public policy shifted from one of abundance to one of shortage and rationing.

We are just told that the costs are prohibitive on these projects now. And I look at the Hoover Dam and all the other magnificent dams during the Roosevelt years. They weren't cost-prohibitive. The cost of construction has not increased to a point where it is cost-prohibitive, so something else is going on. Is that the regulatory burden that is now attached to these dams?

Mr. O'TOOLE. Chairman McClintock, that is absolutely accurate. And what we have found is that the process is so expensive to go—as I said earlier, the bit of the apple. It is multiple bites of the apple by the agencies. And so, not only do you go through one process with Fish and Wildlife, EPA, Corps of Engineers, and others, you do that multiple times. So your bill and the bill that is anticipated by this committee would change that——

Mr. MCCLINTOCK. So that is the difference, then, is that in those days, when we were constructing these massive reservoirs, we

didn't have to go through the costly and time-consuming paperwork that is now required by the modern bureaucratic state, and the result was these dams were not only cost-effective, they were magnificently cost-effective, and producing a cornucopia of benefits, not just water, but also hydroelectricity, flood control, and recreational resources down through generation after generation. And that is what this generation has now blocked by its bureaucracy. Is that accurate?

Mr. O'TOOLE. Yes, sir. And I would tell you that the anticipation of use of water is the envy of the world.

Mr. MCCLINTOCK. By the way, I am told that private financing would not be a problem for constructing new dams, if there was some degree of certainty, and if the money wasn't bled away by a multi-year, sometimes multi-decade, process of bureaucratic delay. They say, "Look, these dams store a lot of water." That is a very valuable thing to do. They generate lots of hydroelectricity; that is very valuable. They provide flood control to entire regions, and they produce magnificent recreational resources, all of which are valuable. And investments would not be a problem, if there was some certainty in the process. Is that accurate?

Mr. O'TOOLE. Yes, sir, Mr. Chairman. And I will tell you that Representative Lummis was in the Wyoming legislature when they created a concept of funding renewables—water, government, education, wildlife—with non-renewables. And that funding mechanism is the State's money. That was what was so frustrating. It was the State's water, the State's money. And this 14-year process was just—it was very antagonistic, and it was not correct. And I think what you are anticipating is a much more user-friendly process.

Mr. MCCLINTOCK. Thank you. Mr. Ellis, however we may disagree on the details of financing, wouldn't it be a good idea to bring these costs down by streamlining the regulatory process?

Mr. ELLIS. Well, Mr. Chairman, I am not an expert on the regulatory process, and that is why my testimony concentrated on the other bills. But my understanding is that your bill is being based on——

Mr. MCCLINTOCK. But your organization is based on the claim—usually quite well-honored—that you want to reduce unnecessary government costs.

Mr. ELLIS. Yes, absolutely, and——

Mr. MCCLINTOCK. Wouldn't you think it is a good idea to reduce unnecessary government costs in the construction of these facilities, however they might be financed?

Mr. ELLIS. Absolutely, Mr. Chairman.

Mr. MCCLINTOCK. Thank you. The Chair recognizes Mrs. Napolitano for 5 minutes.

Mrs. NAPOLITANO. Thank you, Mr. Chair, and it is good information.

You know, you may think I am not for farms, and I am not for storage. I am. It has been one of the hallmarks of sitting on this committee for 16 years, is that we need to find a way to work collaboratively. You are right. Put politics aside. But when we don't get a bill until last week to be able to determine what is in it, I

don't call that working on a bipartisan basis, so that we can be able to look at what is being proposed and how it is being proposed.

So, there are many things I could tell you, but my time will be running low. So, Mr. Somach, you mentioned the surface water storage. And we are really talking about dams, right?

Mr. SOMACH. Yes.

Mrs. NAPOLITANO. Right. Which is something that my Chairman has been advocating for as many years as he has been in Congress, that I know of. Can you give me, just very quickly, just a synopsis, the approximate cost of building dams, small, medium, or large, just a offsite figure? How much time would it take to site, obtain permits, build a dam? How long before one drop of water is stored? How long before it is filled? And how long before one drop of water can actually be realized for farms?

Mr. SOMACH. Let me give you an example——

Mrs. NAPOLITANO. Quickly, please.

Mr. SOMACH [continuing]. We are working on right now, and that is Sites Reservoir. If you compare what it will take if that is proceeded through, in terms of a Federal project built by the Federal Government, going through all the Federal regulations—and that process started way back because that was identified as a CALFED reservoir——

Mrs. NAPOLITANO. Quickly, sir.

Mr. SOMACH [continuing]. You are looking at 2025 before you would be ready to construct, and then 5 years of construction. If we were able to cut through all of that stuff, we are looking at a timeline that takes us into the teens, so that by 2025 we could be swimming in that reservoir, we can be drinking water from that——

Mrs. NAPOLITANO. And the cost?

Mr. SOMACH. The cost of those reservoirs will be in the billions of dollars.

Mrs. NAPOLITANO. Right. And then we have the issues of being able to discuss openly and transparently what actually are the roadblocks, what are the things that the farms and the coalitions can give to us to be able to say to Bureau of Reclamation, Army Corps, whoever, "These are things that need to be taken care of and need to be taken care of expeditiously."

Mr. SOMACH. I could give you a list right now for——

Mrs. NAPOLITANO. Yes, I know, I know. But I am just saying these are things we don't talk about here, OK? These are the things that do not go into the record.

Mr. SOMACH. We could be as specific——

Mrs. NAPOLITANO. Would you submit into the record, sir?

Mr. SOMACH. I would absolutely submit it for the record.

Mrs. NAPOLITANO. Thank you, sir. The other questions, sir, to Mr. Ellis, is you make the point that in 1902, when the West was formed, it was to attract farmers to the West to be able to feed people. The policies advocated for include 40-year repayments for any facility with 0 percent interest, which are out of date. Do you agree taxpayers should continue to subsidize a zero percent loan?

Mr. ELLIS. No, we don't. I think that times have changed. And, actually, that has changed, especially after the Central Valley Project Improvement Act, and some of the changes. But, clearly, we

need to be moving toward more pricing water appropriately. And I am very sympathetic to the——

Mrs. NAPOLITANO. Yes.

Mr. ELLIS [continuing]. What is going on in the drought, and everything else, but I think these are important ways to move forward.

Mrs. NAPOLITANO. Mr. O'Toole, I congratulate you. My understanding is you have a very efficient methodology you have undertaken for years. And congratulations. So we talk about recycling water runoff, and yes, you have done a lot. So has southern California. We have been rying to get weaned off of imported water for the last almost three decades, and we are succeeding in that.

But you mentioned before this committee—some time before, the conservation and efficiency efforts you and others in your State have undertaken. And today we are only finding the mechanism for surface storage. And my concern—not only is the cost, the time—it is not going to produce water tomorrow that is so desperately needed. But the conservations, shouldn't we look at funding other conservation methods as going to be effectively more—deliver more wet water sooner?

Mr. O'TOOLE. Ms. Napolitano, I agree so much with what you said in your opening statement about the tools in the toolbox have to be varied. What I have found in my own personal experience is that, as you watch these watershed groups come together, which are made up of ranchers, farmers, conservationists, municipalities, they understand that is one of the main tools. But there are other tools.

I have worked in my own career on cleaning water. I spoke in Los Angeles this year on the need for other types of technology. It is going to be a whole toolbox that we have to have. And what I think—and my experience is that this one is one of the easiest, and it is one of the most difficult to achieve. All of the toolbox has to be——

Mrs. NAPOLITANO. And I agree with you, sir. It just takes a lot more time to be able to bring all those facts out. Thank you.

Mr. O'TOOLE. Yes, ma'am.

Mr. MCCLINTOCK. Mrs. Lummis?

Mrs. LUMMIS. Thank you, Mr. Chairman. I might comment I have never thought about water as being a commodity. I think about water as being an absolute necessity. My body is mostly made out of water, and I don't think of myself as a commodity.

Mr. Hurd, California currently has one of the lowest snowpack precipitation levels on record. California's precipitation levels 2 years ago were so high that reclamation was allowed to turn water out of dams in northern California. Is that true?

Mr. HURD. That is correct, ma'am.

Mrs. LUMMIS. If additional storage had been in place, would some of the water that was turned out, would it have been available for capture, increasing storage water?

Mr. HURD. Yes, it would. And some of it would be there right now for usage by this State.

Mrs. LUMMIS. So, it would allow for higher water allocations this year, at a time when it is needed——

Mr. HURD. Yes, ma'am.

Mrs. LUMMIS [continuing]. Had it been stored back then.

Mr. HURD. Depending upon the way the system had been run.

Mrs. LUMMIS. Mr. O'Toole and Mr. Hurd, what will western agriculture look like in 20 years, if new storage isn't built?

Mr. O'TOOLE. Well, our experience—and, again, I refer to the 17 States that the Family Farm Alliance deals with—we all know that in some aquifers there is a depletion. We all know that we are in a climate variable State. We see our neighbors, you know—absolute survival is happening.

And when I listened to some of the testimony yesterday, and the meetings we had here on the Hill, there are people with permanent crops that, this year, if they do not have water, they will start tearing those permanent crops out. That just tears your heart out, because you know, Representative Lummis, just as I do, those are people, those are families, those are multi-generational, heartbreaking experiences. And we are going to see more of that if we don't allow ourselves to plan for the future with all the tools in the toolbox.

Mrs. LUMMIS. Mr. Hurd?

Mr. HURD. My comment is part of what my testimony was, in that the exploding population here and globally is depending upon us to feed them. And we have to have water as the tool to do that.

We are smart enough, I feel, that we have already shown the conservation, the technology, the mindset to continue to improve and deliver that food. Yes, the West, 20 years from now, will look different. But God help us if we are not smart enough to seize the moment. And that moment is the water, as the underlying blood of all of us.

Mrs. LUMMIS. Mr. Hurd and Mr. O'Toole, will conservation alone meet the West's water needs?

Mr. O'TOOLE. You know, it is a really interesting matrix. And I told you, the committee, that I did a tour of California, and many of the Family Farm Alliance members use the most efficient water usage drip irrigation in the history of the world. The Israelis come to California to learn how to do irrigation. So in some places, conservation is appropriate.

I also serve on a group called the Intermountain Joint Venture, which was the Western States' migratory bird group that oversees, through the States, how we maintain our populations of birds. And they have come out with a study that indicates that upper flood irrigation in the upper valleys of the West is why the bird populations are the highest they have been in 50 years.

And so, you have to look at each individual. But, you mentioned my father-in-law. He had a saying. He said that resources are too important to manage generically; they must be managed specifically. And what that means is you go watershed-by-watershed, and understand what is the appropriate technology, what is the appropriate storage, and what is the appropriate conservation.

Mrs. LUMMIS. I was in Israel just last week, and a big water project, Red Sea-Dead Sea, is being contemplated to provide water to Jordan. And the Israelis and the Jordanese are working together on this, because of the precious needs of water for Jordan that Israel is willing to help with.

So, even in the land where Isaac, King David, walked, Jesus walked, water issues and water storage issues are critically important right now. We should learn from not only our biblical predecessors, but from the people who are living there now, about the importance of storage and cooperating.

Mr. Ellis, I am curious about Taxpayers for Common Sense. Does the Sierra Club fund Taxpayers for Common Sense?

Mr. ELLIS. No, ma'am.

Mrs. LUMMIS. Who does?

Mr. ELLIS. We get money from charitable contributions from individuals and charitable foundations. We don't take any money from the government, we don't take any money from unions, we don't take any money from corporations.

Mrs. LUMMIS. And so the Pew Charitable Trust, for example?

Mr. ELLIS. No, ma'am.

Mrs. LUMMIS. Can you name some?

Mr. ELLIS. The McKnight Foundation was one. There is Carnegie, you know, so there is a variety of different charitable foundations.

Mrs. LUMMIS. My time is up. Thank you, Mr. Chairman.

Mr. MCCLINTOCK. Mr. Costa?

Mr. COSTA. Thank you very much, Mr. Chairman and members of the subcommittee. My colleague from Wyoming's comments about her recent visit to the Holy Land reminds me of a couple thoughts. One, California and the West is going to need rainfalls of biblical proportions if we are going to get past these dry periods, which are catastrophic. And I am also reminded of another quote from the Bible, "Blessed are the peacemakers, for they shall inherit the world." And we need some peacemakers today in California to, as Mr. Hurd indicated, to use some common sense and work together on a bipartisan basis.

I consider myself one of those peacemakers. As difficult as this is, being at ground zero, where we have farm communities, farmers, and farm workers that have, not only in 2009 and 2010, experienced horrific conditions—and I am talking about levels of 40 to 48 percent—but now, with 13 percent of our snowpack, seemingly looking at perhaps the worst drought that we have experienced since 1977, and perhaps a mega-drought, I mean, it is going to be bad, not only for my area, but for the entirety of California.

And I would hope, for those of us who would like to figure out where the middle ground is, that we use this crisis to understand that we have been kicking this can down the road way too long. We have a broken water system in California. The West has other, similar, related issues, but we have a broken water system designed for 20 million people and the farms that are the most productive anywhere in the world, that are the most water-efficient anywhere in the world, and that pay some of the highest prices for water that any comparative farming operations do anywhere in the country.

And for the life of me, I can't understand why we have this attitude sometimes that pits the farmer against our urban, our environmental constituencies. I mean I remember the movie, "Oklahoma," where the farmer and the cattleman had a fight, but this is nuts. We need farmers and we need our urban constituencies,

and we need to work together. And when you deny any region of California, or any region of this country, the ability to have water reliability, it makes absolutely no sense, whatsoever, to me. And that has been part of what this fight has been about in California for decades. This is a new one, by the way. I can tell you where all the political fault lines lie in California. They are deep and they are historic. And it is high time we put them aside.

Now, on this legislation—and I will get off my soapbox here—that we are looking at, Mr. Somach, you have been around here for a long time. I think this accelerated revenue repayment efforts for surface water enhancement is something that there is plenty of precedent for, right?

Mr. SOMACH. Correct. There is precedent. The early repayment, there is precedent. Other specific pieces of individual legislation that have occurred over the period of time, and the redirection of funds, there is also precedent for that. Certainly the San Joaquin River restoration legislation in California is an example. And, as I said in my testimony, the Arizona Water Rights Settlement Act was a very big——

Mr. COSTA. Well, and the drainage settlement thing that we are looking at——

Mr. SOMACH. Correct.

Mr. COSTA [continuing]. Would offer a repayment. I mean there is a whole lot of precedent. This is good legislation, and I think we need to work on it.

In terms of coordinating the Permitting and Coordination Act, let me make this local. And I don't know, Mr. Hurd, if you want to comment. And, Mr. O'Toole, let me thank you and the Family Farm Alliance, and some of your board members. We appreciate the good work you do, and the advocacy you provide.

I am looking at Shasta, I am looking at Sites, I am looking at Los Vaqueros, I am looking at Temperance Flat, I am even looking at the seismic issues we are dealing with in the San Luis Reservoir as being opportunities to increase capacity. Should the Bureau fulfill their commitment this year and complete the studies on Shasta and Temperance Flat? I know the Sites is being handled more by the State.

How far off are we, then, from determining when we could begin an effort on construction? And I know my time has run out.

[No response.]

Mr. COSTA. Can I get the questions answered, Mr. Chairman?

Mr. MCCLINTOCK. Yes, sure, just very briefly.

Mr. COSTA. Sure.

Mr. HURD. I don't have an exact number, Jim. But however, the importance of it can't be emphasized enough. And the ability to move forward on these projects, instead of just putting on the shelf——

Mr. COSTA. I mean this is long term, of course, as we know.

Mr. HURD. Sure.

Mr. COSTA. That is not going to deal with our current—Mr. Somach?

Mr. MCCLINTOCK. We are going to do another round of questions.

Mr. COSTA. OK.

Mr. MCCLINTOCK. But in deference to the other Members——

Mr. COSTA. All right.

Mr. MCCLINTOCK [continuing]. I would like to move along, if we can.

Mr. Tipton?

Mr. TIPTON. Thank you, Mr. Chairman, and I would like to echo some of Congressman Costa's statements in regards to water, that this shouldn't be a partisan issue. Everybody likes to eat and be able to have crops to be able to grow. And this is something that, as Americans—Mr. Hurd, you had noted, in terms of the importance of being able to feed America, and to be able to feed the world.

In 1960, the census in the country showed that we had about 130 million Americans. Our last census showed we have well over 300 million Americans. That means we are going to have to be able to have the water for them not only to be able to bathe, but to be able to grow the crops for them to be able to eat. And probably on the conservation end of it, we do need to be able to have that commonsense, all-of-the-above approach.

But it also means that we are going to have to be able to store more water. And we need—I come from a headwater State. If we step back just a couple of years ago now, in Colorado, the Colorado River, as I drove past it, and the Animas River, the San Juan and San Miguel Rivers, driving through there, were running high in late August, because of the great snowpack. We have different seasons, different times when we are going to be able to have those opportunities to be able to capture that water, and we need to be able to take advantage of that. But we have some challenges, I think, that many of you, in your testimony, are certainly speaking to.

Mr. O'Toole and Mr. Hurd, could you describe, just briefly, what are the most important hurdles in moving a new storage project forward?

Mr. O'TOOLE. Well, Mr. Tipton, the hurdles are the funding. In Wyoming, for example, we have adequate funding to do the construction on our own, although, as I mentioned, our valley, which is—half of it is in your district and half of it is in Representative Lummis's district—we had two projects that are federally authorized that could still be constructed, with funding. But the State of Wyoming has its own funding. The next step is going into the Federal system.

And the Endangered Species Act clearly has made an impact on the analysis of the process, and I think—let's be blunt. The experience with the delta smelt in California is really almost the worst case scenario of what can happen with using that act in a way that was never anticipated. So I——

Mr. TIPTON. Could you maybe clarify and just remind me? Because when you brought up the ESA, we also have NEPA, Clean Water Act, a variety of different regulatory processes that are out there. How long was the permitting portion of this to be able to get to that stage to where it is ready to go and you just need the financing?

Mr. O'TOOLE. In our case it was 14 years.

Mr. TIPTON. In 14 years.

Mr. O'TOOLE. Yes.

Mr. TIPTON. The Chairman had noted it a little bit earlier. Has that driven up the costs?

Mr. O'TOOLE. Well, I think it—as I said, it doubled the cost and halved the project. So it had a——

Mr. TIPTON. Doubled the cost of the project. Can you describe for me what type of coordination was going on between those different agencies to be able to try and accelerate a good end, having water to be able to grow crops and to be able to have use for our cities?

Mr. O'TOOLE. Mr. Tipton, I attended many of those meetings, some in Denver with the EPA, some in Cheyenne, with the Corps of Engineers, some with the Fish and Wildlife Service. And what I found was there was very little coordination. It was really individual agencies responding. And there was a—as you know, there was a philosophy over the last couple decades of not doing storage.

Mr. TIPTON. No coordination that is going on——

Mr. O'TOOLE. None——

Mr. TIPTON. Increasing costs——

Mr. O'TOOLE. Virtually none, whatsoever.

Mr. TIPTON. Family Farm Alliance, Mr. Hurd, maybe you can comment quickly, as well. Is that a good way to run a business?

Mr. HURD. Well, respectfully, sir, I will tell you the numerous numbers of projects that are identified are certainly important, but think of one thing. Everything stops at the delta, where I live and we farm. Right next to where I live, there are thousands of acres in the Grasslands Water District for wildlife refuges. They are sitting dry right now, today. Los Angles Metropolitan Water District receives over about 15 to 20 percent of their supply through the same canal systems that I irrigate my farm. So it is not that we are isolated, farmer fighting farmer. This is the whole State, as Mr. Costa represents.

So, the decisionmaking on some of these funds to fund a particular project really should also be focused on a very tough issue of the delta. We, in the Ag sector, have been willing to step forward to—$15 to $18 billion to build the DHCCP project for conveyance. And yet, we get absolutely no assurance that, once the project would be built, we would get any more appreciable water. Is the bank going to loan me money and, for my grandchildren to pay if we build a project and there is no water to run through it? Let's have some direction. Let's have some guidance, sir.

Mr. TIPTON. Great, thank you. We are going to have another round, Mr. Chairman?

Mr. MCCLINTOCK. Yes, we will, sir.

Mr. TIPTON. Thank you.

Mr. MCCLINTOCK. Mr. Huffman?

Mr. HUFFMAN. Thank you, Mr. Chair, and thanks to the witnesses for traveling to be with us, and for your testimony.

I think the drought that we are talking about is of great concern to all of us. And sometimes, when we discuss this in this body, the media and others get the perception that it is about one part of California, or about one sector of California, and it is really not. I will tell you, representing about a third of the California coast, the north coast, I have areas in my district that are hit every bit as hard or harder than some of the most dire situations that we have

heard described today and that we have heard described in other narratives about the San Joaquin Valley.

So, we should just stipulate, I think, at the outset, that we are all concerned about this drought, and that wherever you are in California, with a few happy exceptions, there is a lot of pain going on, and a lot of angst about how we are going to get through the summer. I have three decent-sized municipalities that, if it doesn't rain significantly, are going to run out of water in about 2 months. That is a big deal. They don't have other water they can buy, they don't have other water they can find. It is over for them. And you can't really fallow municipalities. So this is a bad situation, and I take it very seriously.

But I am also mindful of the experience in Marin County in the last really scary, critical drought, 1976/1977. In the immediate aftermath of that there was a feeling that we needed to do something to protect against that in the future, that surface storage should be part of the mix, and we built a dam called Soulajule that made everybody feel pretty good because they built a dam. But it hasn't provided any water since, because it wasn't in a good location, it didn't really operationally fit within the system. And, frankly, after several decades of finally paying off the debt from that project, Marin is looking for other sources of water, because that didn't help us. It won't even really help us with any water this year, in the most critical drought year of record.

So, I think we should be very careful. There may have been a time in California water when you built it first and then asked questions. I think it was Harvey Banks that said that about the State water project back in the day. That may have worked when you had a lot of low-hanging fruit in California, projects that you knew were going to generate large amounts of yield, projects that had financing in place, that had partners.

But I don't think those are the times we are in right now. And we need to remember that none of the surface storage projects we are talking about here today will help us in this drought. They may not even help us in the next drought. They may be two or three droughts from now before they could even help, if they were finally brought online, because they just take too long to plan, construct, and finance—finance should probably be before construct in that sequence.

So, I think we have to aim carefully before we shoot. And, in that regard, I am curious about these north-of-delta surface storage projects, because one of the problems we are grappling with—have been for years—is the carrying capacity of the Bay Delta. How much water can be sustainably extracted and exported from that system without crashing the system? And we are having a robust debate about that in California.

There continue to be proposals to maintain record-high levels of exports, which the scientists have told us cannot be sustained, that we will simply run into more and more conflicts and litigation. And, ultimately, we need to accept the fact that we are going to need to export less from the delta, not more, in the future. That, I would argue, is one of the fundamental premises of the California water package of 2009.

And so, my question, Mr. Somach—or, perhaps, to others—is, if we are possibly facing a future where less water is exported from the delta, rather than more, do we run the risk that investing billions of dollars in new surface storage north of delta could create the equivalent of the Soulajule Reservoir that was constructed in Marin County, a big, shiny, new dam that everybody feels good about, but you can't move the water and integrate it into the system and operate it in a way that gives value for that investment?

Mr. SOMACH. No, not at all. In fact, focusing on just environmental needs, just—let's forget about any export needs—one difference between now and the 1977 drought, for example, is there is 1.2 million acre-feet of outflow that is required that wasn't required in 1977. Where does that water come from in a year like that, if we don't have above-the-delta storage?

The Fish and Wildlife Service and the National Marine Fisheries Services are saying they want to hold back in Shasta this year 1.7 million acre-feet for a cold-water pool. That didn't exist in 1977. If that occurs this year, where does that water come from if we don't have additional storage?

Mr. HUFFMAN. I am almost out of time, but have you calculated—what would the yield of Sites be, Mr. Somach?

Mr. SOMACH. The yield itself is 500,000 acre-feet and, used in conjunction with Oroville, Shasta, and Folsom, it will increase upstream storage by another 500,000 acre-feet. So you are talking——

Mr. HUFFMAN. OK, thank you——

Mr. SOMACH [continuing]. About a million acre——

Mr. HUFFMAN. If I can sneak in one last question.

Mr. MCCLINTOCK. Well, you can on the next round.

Mr. HUFFMAN. Very good, thanks.

Mr. MCCLINTOCK. In fact, you can sneak in several in the next round if you are brief in your opening comments.

[Laughter.]

Mr. MCCLINTOCK. Mr. LaMalfa?

Mr. LAMALFA. Thank you, Mr. Chairman. I appreciate the time and for everybody traveling here today to be on this panel.

You know, it is an interesting argument here. But any time you have a project that you can store water in, you have more water. You have available water for some purpose. So I can't believe that if we build projects somewhere, enhance existing projects, that with additional water, whatever that yield is, that someone will not find a place to use it.

So, as we see with our shortage—I look at it as buckets. The more buckets you have that have stored and been filled to capacity when we have plenty of rain, the longer you can draw up on it. If you have—instead of 4 gallons of distilled water in your garage, if you have 6, you have more water that will last longer. So it just seems like common sense that you build as many as you can in a State that needs more.

But the difficulty is—Sites Reservoir, which is pretty close to my neighborhood, has been talked about, not just for the last 20 years, but, really, in concept, for 50 or 60 years. It makes you wish that back in the day, when things were easy to build, they just built everything, and we would still be enjoying these benefits. You know, California, the crisis we are talking about for urban areas, for Ag,

even for environmental use that we are seeing, we haven't even talked about hydropower. I don't know where the electricity is going to come from a little bit later in the year.

The issue is that we need to build it while the sun shines. When we have flush years we don't talk about water any more. This is the year we really need to get the public's attention and move these projects forward as much as possible. So the biggest impediment hasn't been, really, the financing; it has been the confidence of the people that would finance that we can build a project. It comes right back to the red tape.

So, Mr. O'Toole, I would like to touch base with you on that. You noted that the conflicting requirements from Federal agencies, State agencies, and the time that it takes to do that, what do you think that is really doing—I mean with regards to Sites or any of the other ones—in cost, in time, lost opportunity? What does that look like? If you want to, emphasize that a little bit more.

Mr. O'TOOLE. I had mentioned earlier, Representative, that I did a tour of California last fall, and went into the Bureau of Reclamation offices near the San Luis project, and saw the vision of what the Bureau of Reclamation had in California. I had no idea that the Shasta Dam was built with the anticipation of raising 200 feet. There is—reservoir was anticipated that, if we hadn't gone through a multi-decade let's-not-do-anything phase, we would have them today. And I think that is the beauty of this vision of the bill, is to make the system user friendly.

And it is really a question of commitment. Is your commitment to the long term, or is your commitment to the short term? And my experience has been—the State of Wyoming just did a study, the Governor did a 2-year study. What did it come out and say? More storage. The Governor of Idaho last week got a multi-million-dollar appropriation from the legislature to do more storage, to raise some projects.

So, I think the policymakers on the local levels are understanding how important this question is. And, again, I appreciate your committee looking at a solution.

Mr. LAMALFA. What do you think, with the extended studies, what are we learning that we don't already know, either from previous projects—what new information are we turning up that is really going to be helpful to the public interest that we don't already know?

I mean, we toured Sites Reservoir just a few years ago, when I was in the State Assembly. And the representative, I think he was from DWR, said, "If you can't build it here, environmentally, you can't build it anywhere." What are we learning with these extended studies that study it, seemingly, to death?

Mr. O'TOOLE. The Family Farm Alliance did an analysis with the Bureau of Reclamation a few years ago on the potential storage, and there are many sites that are ready to go. All they need is a go-forward. So I think that there is more to learn. In my watershed, we identified a few new places that we think, down the road, are going to be appropriate.

Mr. LAMALFA. No, I am speaking of the environmental studies, not the engineering of where they would go. It just seems that they are used as tools to block projects from moving forward.

Mr. O'TOOLE. I think, in the worst case scenarios, they have. But I will tell you in sort of the new world where you have to have the buy-in of everybody to get any projects done, the understanding of hydrology has been expanded, the understanding of wildlife benefits has been expanded. The purpose and need is the crucial analysis by the Government as to why you build. Expanding that understanding is how we are going to get things done faster in the future.

Mr. LAMALFA. OK, thank you. Going back to the biblical reference here, I think this bill, H.R. 3980, could actually be like Moses parting the red tape to get the job done here.

[Laughter.]

Mr. LAMALFA. So——

Mr. MCCLINTOCK. Thank you.

Mr. LAMALFA [continuing]. Mr. Chairman, I yield back.

Mr. MCCLINTOCK. We are going to go to a second round. And I will begin.

There was a criticism raised earlier that these bills were just introduced last week and are moving very fast. I would point out that this subcommittee conducted painstaking hearings all through last year on these subjects. The details of these measures were all meticulously fleshed out at the time. And, in fact, those hearings were the genesis of these bills. So the details should not come as a surprise to anyone who followed the hearings last year.

The other point that was raised that I just want to mention in passing is that, well, these big projects, they just take too long to construct, it is not going to help in the current crisis—which is true, it will help to prevent future crises—and I am reminded of the story of General de Gaulle, who wanted to plant some oak trees at his headquarters. And when he was informed, well, oak trees will take many, many years before they grow to maturity, his response was, "Well then, you shouldn't waste any more time, should you?" And that is exactly the stage that we are at right now.

Mr. Ellis, you objected to Federal financing. And I assume that is because—even though it is a loan payback by the beneficiaries, your objection is that it is a below-market-rate loan and, therefore, represents a subsidy to those beneficiaries. Is that, essentially, the—really, the objection?

Mr. ELLIS. Yes, sir, in a nutshell.

Mr. MCCLINTOCK. But you don't object to the general position that the beneficiaries should pay to redeem these loans through their purchases of water and power; the only question is at what rate.

Mr. ELLIS. Right. And then, also, with at least the way the system is set up in the way the two bills interact, is that there are going to be cases of where people are paying back their projects, and then that is cross-subsidizing or going over to another project. And part of our major concern is that it is moving outside of the congressional appropriation and authorization process.

Mr. MCCLINTOCK. And also, I assume, because of the prices, if they are left alone, send accurate signals to people of the actual cost of these various forms of water delivery, so that people can then make rational choices as to how much they buy, and at what rates.

Mr. ELLIS. Yes, Mr. Chairman.

Mr. MCCLINTOCK. OK. Well, now, we are told that desalination is an important measure that we need to move forward. I have had a lot of people come up to me and say, "Well, why don't we just go to desalination?"

And my response to that is, "Well, that is great, if you don't mind $1,000-a-month household water bills". But, of course, the desalination bills that are being proposed here are not reflecting the actual price. That is all being handed over to the taxpayers. They wouldn't dare actually present the price to consumers of this water. Would you object to such bills?

Mr. ELLIS. Certainly we have concerns, yes. I mean, basically, in a nutshell, we are coming down to dollars and cents. That is what we are concerned about. And we are here to represent the taxpayers. And so, our concern is that water be priced appropriately, and that it recommend that those avenues be pursued.

Mr. MCCLINTOCK. So desalination——

Mr. ELLIS. And it is——

Mr. MCCLINTOCK. So desalination should also be subject to the Beneficiary Pays principle, so that people get accurate price signals?

Mr. ELLIS. Yes.

Mr. MCCLINTOCK. Would that apply also to title 16 recycling, which is entirely paid for by taxpayers?

Mr. ELLIS. I have to say I am not familiar with the program, Mr. Chairman, to answer that appropriately.

Mr. MCCLINTOCK. So we would agree that, basically, all of our water projects ought to reflect the actual price of those projects. The only question in contention, from your point of view, is whether the loans are actually being repaid at market rates.

Mr. ELLIS. Yes, sir. The only other exception is both the Corps projects and with Bureau projects there is this ability-to-pay provisions that are in the law, and I think are appropriate, because, as Congresswoman Lummis said, water is essential to life. But, yes, in a nutshell, yes, sir.

Mr. MCCLINTOCK. Mr. O'Toole, we heard Los Vaqueros mentioned. That is 60,000 acre-feet, I believe, was the figure. Would it surprise you that simply raising the spillway at the Exchequer Dam of Lake McClure in California would yield an additional 70,000 acre-feet of water?

Mr. O'TOOLE. I am not familiar with the project, but I think the Pathfinder in Wyoming is being raised, as we speak. And that raising of projects, whether it be Shasta or Pathfinder or others, are all going to take an existing project to an increased——

Mr. MCCLINTOCK. My point is raising the spillway 10 feet at the Exchequer Dam is 70,000 acre-feet of additional water storage. And we are running into a lot of opposition from the other side because it requires adjusting a wild and scenic river boundary to conform to the pre-existing FERC boundary. Does that surprise you, that a State in which such a controversy can arise is now wanting for water?

Mr. O'TOOLE. I have to tell you nothing surprises me any more in the water world. But I think efficiencies are where we are trying to get to, yes.

Mr. MCCLINTOCK. Thank you. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chair. Mr. Ellis, could you explain the ability-to-pay provision, and how does this affect repayment, and who makes up the difference?

Mr. ELLIS. Well, from our perspective, at least on the payment—well, in the Corps, they have never even used the ability-to-pay, I have to admit. I am not as familiar in the Bureau of Reclamation, I just know that it exists.

But, from our perspective, it generally—yes, the user should be repaying for the project, and they should be paying with interest, and the water should be priced appropriately, because that is going to send the market signal to conservation, into wise and appropriate use.

Mrs. NAPOLITANO. Thank you. Then the Majority makes the fiscal argument that allowing for prepayment pays back the taxpayers sooner. Do you think the issue of prepayment only involves money?

Mr. ELLIS. Well, it is interesting. It is one of the things that Mr. O'Toole indicated that his—I think it was your father-in-law that said that these projects need to be managed specifically. And so, one of our concerns is about this sort of blanket, one-size-fits-all approach to prepayment, rather than having the negotiated approaches that Mr. Somach had discussed, and what I under the GAO are looking at. So that is another issue there, as well.

Mrs. NAPOLITANO. Thank you. And to Mr. Somach, I kind of have—I am sorry, Mr. Ellis, I am looking back at my notes—we have not really spoken to the issue of evaporation, climate change, and the increase in temperature that has—really is playing havoc with our above-ground storage or canals and rivers. If it continues to increase, how will we be able to store more water above ground?

And, added to that is, have we looked at how we can remove sediment from some of the dams and some of the areas of, say, holding water for recharge of aquifers?

Mr. ELLIS. These are all areas that—it is going to become an increasing challenge, going forward, with the issues around. You know, evaporation and these type of things. And so, yes, Congresswoman Napolitano, these are going to be challenges that have to be addressed.

And the other thing is that there is a lot of talk about building more dams. I mean, part of the reason why—everywhere isn't a good dam site, which was indicated by Mr. Huffman's testimony, or comments. And so, that is one of the things that is happening, we are having fewer and fewer good dam sites, we are having fewer and fewer buckets, good buckets that are available, as Mr. LaMalfa was talking about. And so, I think that is going to be one of the challenges, going forward, in identifying where is adequate storage or other needs.

Mrs. NAPOLITANO. Thank you. Yes, and I do agree with Mr. LaMalfa. We need to sit and really go over the different types of programs that we talk about but never really listen to, and how do we address the future, and how do we get all the agencies to start talking to each other and to those affected. And how do we listen to all of them with—instead of just 5 minutes and you are gone. And we don't have the ability to re-rationalize and be able to put

two and two together and work bipartisan on this issue that is so critical for all of the United States, not just the Western States, and certainly not only California.

There are many other questions I would like to ask, but I think I would like to put them on the record and send them to you. But one of the things that I would like to ask Mr.—not Mr. Chairman, but—that our discussion should be for all storage. It should have started over a decade, maybe even two decades ago. And you are right, we are way behind, because we had plentiful in precipitation. But our discussion on water will continue on the Floor today.

But we all are in consensus, believe it or not. We are in drought. The West is in drought. And we just need to look at all options, not just one. And yes, we do need storage, above ground, below ground, we need all of the above. But it has got to be in a bipartisan solution. You need to help us on that.

How can we reach out to you, and have you input to us recommendations that are going to be viable for us to discuss on the Floor and with our agencies, and start not necessarily saying—holding them accountable, but starting to ask the questions, "What are you doing to help our communities?" And just getting the agencies to coalesce, getting our folks to be able to cut on the regs, figure out how do we expedite things that are going to bring about the solutions that we all need.

And, with that, I would like to submit for the record the Bureau of Reclamation statement on this bill, on both of them, H.R. 3981 and H.R. 3980—were received this morning.

Mr. MCCLINTOCK. I believe that is already part of the record, but without objection.

[The information submitted for the record by Mrs. Napolitano follows:]

PREPARED STATEMENT OF THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

H.R. 3981—ACCELERATED REVENUE, REPAYMENT AND SURFACE WATER STORAGE ENHANCEMENT ACT, H.R. 3980—WATER SUPPLY PERMITTING AND COORDINATION ACT, AND A DISCUSSION DRAFT, TO AMEND THE SECURE WATER ACT OF 2009

Chairman McClintock and members of the subcommittee, the following statement represents the initial review of the Department of the Interior (Department) and Bureau of Reclamation (Reclamation) on the three bills. All of these bills were only presented to the Department 1 week ago, and the Department has not had adequate time to conduct an in-depth analysis and develop detailed, thorough testimony.

The Department has expressed concern to the committee that short notice of the hearing on multiple new bills would deprive the Department and the administration the opportunity to provide testimony containing thorough analysis of the language. The Department may provide additional views on this legislation after conducting further analysis.

H.R. 3981—Accelerated Revenue, Repayment and Surface Water Storage Enhancement Act

H.R. 3981 contains language to authorize pre-payment of outstanding construction cost obligations, and also authorizes the conversion of water service contracts to repayment contracts. In general, Reclamation supports legislation authorizing the prepayment of repayment contracts, and has done so before this subcommittee.[1] Below is some background on Reclamation's initial reaction to legislation authorizing prepayment, and our interpretation as to the effect of the bill.

As background, we note that specific statutory authorization for accelerated repayment is not required in all cases involving construction costs that are allocated

[1] H.R. 818 testimony May 12, 2011; H.R. 5666 testimony July 27, 2006; H.R. 4195 testimony November 9, 2005.

to irrigation. The Reclamation Reform Act of 1982 [RRA] subsection 213(c) specifies that no authority is provided for lump sum or accelerated repayment of construction costs, except for repayment contracts that provide for lump sum or accelerated repayment that were in effect as of the enactment of RRA. Therefore, Reclamation and the Congress have interpreted current law to require water contractors to obtain additional statutory authority to make accelerated repayments of construction costs allocated to irrigation, except for those contracts already in effect as of the RRA's enactment, or for contracts otherwise exempt from the provisions of the RRA. As written, the bill would primarily benefit irrigation contractors on Reclamation's Central Valley Project based on the number of water service contracts connected with the Project. For municipal and industrial water service contracts, additional statutory authority may not be necessary for conversion of municipal and industrial water service contracts to repayment contracts, or for pre-payment of outstanding obligations, depending upon the circumstances applicable to each case. With this background, Reclamation can foresee some concerns with equity in implementation of the draft H.R. 3981 as currently written, specifically related to the contract conversion authority provided in the bill. While contract conversion legislation has been implemented for certain Reclamation project units (e.g., the San Joaquin River Restoration Settlement Act, 2009), the general concern is that this legislation proposes a broad, Reclamation-wide, "one-size-fits-all" approach, while the unique aspects of most Reclamation projects argue for a more case-by-case approach to accommodate the nuances of each project and its contracts.

For example, there are instances where contract conversions would be in direct conflict with existing statutory law applicable to the Reclamation project in question. On the Colorado River Storage Project [CRSP], enforced contract conversions required under the language of the draft bill would likely conflict with section 5 of the CRSP Act, which establishes very specific requirements for the collection and disposition of revenues from various project elements into funds specific to that comprehensive, multi-purpose project. Section 5 of the CRSP Act specifically directs where all project revenues are to be distributed. The bill language would change that arrangement, impacting the funding for the project.

Where longstanding pricing systems and/or negotiated payment agreements are in place, those could be completely disrupted by the mandates of this legislation (again, CRSP being a good example). In other cases there is ongoing litigation associated with existing water service contracts that would be further complicated by the legislation's mandate that conversions be granted "upon request of the contractor". Providing this authority to be used at the Secretary's discretion would likely address many of these concerns. Another concern with the bill is that in many cases it would be very difficult to determine the appropriate construction repayment obligation within the proposed 30-day timeframe envisioned by this legislation. Water service contracts often are entered into because a final repayment obligation associated with various project purposes has not yet been determined. Many projects operate under an interim rather than final cost allocation, and therefore only an initial determination of an appropriate repayment obligation could be made within the compressed period allowed under the bill. On projects with several contractors, pay off dates may vary from one contractor to the next (no guidance is provided by the legislation), which would complicate the determination of the appropriate payment amount.

There are other concerns with the financial and discounting language in the bill, which require additional analysis. In particular, the offer of a discounted repayment in section 2(a)(2)(A) may have implications for revenues to the Treasury, and raises questions as to fairness given the contractors who have already pre-paid their obligations under different allowances. For example, similar legislation in the San Joaquin River Restoration Settlement Act of 2009 (section 10010) provided for prepayment on the basis of the outstanding obligation, not the net present value of that obligation. Combined with the discounting at ½ the Treasury rate provided in this same section, this could amount to double-discounting of outstanding repayment obligations. It is also unclear why the Treasury rate specified in the legislation is the 20-year rate. OMB Circular A–129 suggests that, for discounted prepayments, a current market yield on Treasury securities of comparable maturities should be applied. Finally, while section 2(e) of the bill diverts receipts generated to a new account, the legislation has no cost-recovery provisions for the staff time and expenses that would be incurred by Reclamation in accommodating the accelerated repayment determinations, and in developing and executing the new contracts.

Section 2(e) and the remainder of the legislation create a "Surface Water Storage Enhancement Program" to be funded with receipts generated from prepayment of contracts "to fund or provide loans for the construction of surface water storage." Authority for cooperative agreements with water users associations is provided, and

funds would be available without appropriation for a variety of storage projects identified in section 2(e)(5). Without any accompanying offset, we believe this provision would increase direct spending and would score under existing Pay-As-You-Go [PAYGO] provisions. Furthermore, while the administration welcomes and supports efforts to efficiently maintain water assets, any proposals should result in the most efficient long-term use of the available Federal and non-Federal funds and be consistent with Federal budgetary requirements.

Reclamation is proud of its history constructing the surface water storage projects that are central to life in the West and our national economy. What is rarely considered in the political discussion of surface storage are the realities of project repayment and market conditions associated with building large dams today. In February of 2012, Reclamation testified before this subcommittee at a hearing titled "Water for Our Future and Job Creation: Examining Regulatory and Bureaucratic Barriers to New Surface Storage Infrastructure." As stated at that hearing, the most frequent reasons for fewer large surface storage projects being built today center around economics or an inadequate potential water market associated with the given facilities. In other cases, environmental, safety or geologic challenges came to light during a project's development, and rendered construction, completion or operation unfeasible. Local opposition sometimes contributed, leaving the facilities "on the books" awaiting further action, but with external events and new priorities passing them by. This legislation devotes significant new resources to the prospective construction of new surface water storage. But the underlying economic issues that prevent projects from being built—the difficulty of repayment—are unchanged by this bill. Reclamation's focus has instead been on meeting the challenge of rehabilitating the existing, aging, water and power infrastructure on which western economies depend. We would be glad to work with the subcommittee on this important aspect of the debate surrounding new surface water storage. However, we believe that any potential revenues from accelerated repayment of outstanding contractor obligations should be repaid to the Treasury or Reclamation Fund to fulfill the project beneficiaries' obligations to the taxpayers who originally financed these projects.

H.R. 3980—WATER SUPPLY PERMITTING AND COORDINATION ACT

H.R. 3980 directs the Secretary of the Interior to coordinate Federal and State permitting processes related to the construction of new surface storage projects on lands managed by Interior and the U.S. Department of Agriculture [USDA]. Section 3 of the bill would establish Reclamation as the lead agency for all reviews, analyses, permits and other requirements necessary for construction. A series of deadlines and timelines are mandated for notifying and consulting with cooperating agencies, completing environmental reviews, and determining project schedules. While nothing in the bill would facilitate more regular Federal funding for any of these activities, the bill does allow for contributed funds from non-Federal entities. However, section 6(c) of the bill would prohibit use of any contributed funds for "a review of the evaluation of permits" by the Reclamation Regional Directors in the region in which qualifying projects would be built.

This legislation raises several concerns. In section 2(4) the definition of "cooperating agency" leads to confusion and is inconsistent with established regulations and judicial interpretations. For example, it is inconsistent with the definition under NEPA and its implementing regulations which identify Federal, tribal, State, and local governmental entities as potential cooperating agencies and further allow those governmental entities with subject matter expertise to be designated cooperating agencies. In section 6(c) and throughout the bill, it is unclear what public policy problem would be addressed by the bill. Under the National Environmental Policy Act, the Economic and Environmental Principles and Guidelines for Water and Land Related Resources (P and G's), existing regulation and other laws, there is already ample basis for review of projects and coordination among Federal agencies involved in water supply planning. We do not know of any Reclamation or USDA-sited surface water storage projects that have been denied construction because of delays associated with project review or permitting, or shortcomings in communication among Reclamation, USDA, or any other State or Federal partners. Rather, as stated above and in prior testimony at the 2012 hearing, project economics and the pricing and repayment challenges in the potential markets where projects would be built are the primary reasons for some projects being authorized but not constructed. If nothing else, this bill reduces the time necessary to establish the merits of projects and, in some ways, could make favorable recommendations for project construction less likely.

An additional problematic aspect of the bill is that it establishes Reclamation as the lead agency for permitting for storage projects on Interior and USDA administered lands. Since those lands exist in all 50 States, this would put Reclamation in a significantly expanded role of administering the permitting process for activities outside the 17 Western States where Reclamation has typically had jurisdiction.

DRAFT BILL—TO AMEND THE SECURE WATER ACT OF 2009

H.R. _____ (Discussion Draft) would amend the Secure Water Act to create a new "surface water storage enhancement program" within the Department, funded for 5 years with $400 million per year in receipts that under current law would be deposited in the Reclamation Fund. These are revenues that would otherwise flow to the U.S. Treasury, but which would, under the draft bill, be made available for construction of surface water storage projects without appropriation. This provision would increase direct spending by $2 billion and score under existing PAYGO provisions. Construction could be funded with these revenues "exclusive of any Federal statutory or regulatory obligations relating to any permit, review, approval or other such requirement." Section 1(b) of the bill would add language to the Secure Water Act defining "any non-Federal facility used for the surface storage and supply of water resources" eligible for construction funding.

We recognize that this is a "discussion draft", and would be glad to engage in further discussion with the subcommittee on the bill. We believe that spending on surface-storage projects should reflect consideration for the economic return to the Nation. We would like additional clarity on the meaning of several phrases in the bill, and have questions as to how Reclamation would establish eligibility for funding under the proposed program. We would be glad to work with the subcommittee to explore these issues further. In conclusion, the Bureau of Reclamation has a long history of constructing, managing and operating surface storage for the benefit of the arid West, and where projects make environmental and economic sense, will continue to pursue surface storage as one of many options to meet water demands in the West.

Mrs. NAPOLITANO. And, with that, I yield back the time.

Mr. MCCLINTOCK. Mrs. Lummis?

Mrs. LUMMIS. Thank you, Mr. Chairman. Mr. Somach, regarding the benefits of prepayment, Chairman Hastings' bill, why would an irrigation district want to give up an interest-free loan, when they would have to replace it with a loan that has an interest payment? What is the benefit of doing that? Obviously, it is not financial.

Mr. SOMACH. No, it is not financial. It has a little bit to do with the—and we use the word a lot here—red tape. The example that I gave you in the Oregon situation, in fact, they didn't go out and refinance, they pulled money out of their pocket, so to speak. That $250,000 was not financed, it was simply paid as an early repayment.

The other example I gave in my written testimony is a current situation that I am dealing with, where I have a settlement contractor on the Sacramento River, and its settlement contract is for about 50,000-plus acre-feet of water. And because of the peculiarities of the way the settlement contract read, 600 acre-feet out of the 50,000-plus acre-feet is denominated as Federal project water. That Federal project water requires the land owners to report all of their land holdings westwide on an annual basis. And it has, actually, as a practical, plain, old practical matter, just wreaked havoc, in terms of what they have to do annually.

And, moreover, every time they buy a piece of property elsewhere in the entire Western United States, they have to kind of ripple through because of this 600 acre-feet of water. The ability to just simply early pay that 600 acre-feet has very practical ramifications.

I also note that what it does is it relieves one of some of the more burdensome or onerous provisions of the Reclamation Reform Act. But that policy actually comes out of the Reclamation Reform Act itself, because if they just were to pay this out in the normal and ordinary way, once repayment took place, all of those burdensome requirements would fall away by operation of the Reclamation Reform Act. So that all we are talking about here is accelerating, through early repayment, what would have happened in any event. So it is not a——

Mrs. LUMMIS. Thanks, Mr. Somach. I appreciate it.

Mr. O'Toole, now I am flipping back to the other bill. In your view, does State involvement in permitting need to play a stronger role? And should State findings and data be part of the overall review process?

Mr. O'TOOLE. Representative Lummis, the State participation is crucial. I think you know the Wyoming Water Development process is multi-year involvement in these processes right now. In our valley we are looking at an appropriation last year from the legislature to begin the planning process, and it is absolutely crucial. That is where the information is, and the motivation.

And I might just say that part of the process, as it is now, is that essentially the Federal Government gets to decide which of the priorities—there may be several priorities that the State has identified, and the Federal Government gets to identify. Often that isn't the right place. And so, I think the knowledge at the State level is crucial to make these things work.

Mrs. LUMMIS. Following up on that, do you believe that allowing non-Federal governmental entities to financially contribute to the coordinated permitting process should be acceptable for all water users, and not just for, for example, San Francisco, as was supported by the previous House Majority party?

Mr. O'TOOLE. Representative Lummis, I am not that familiar with that process, but I know that Wyoming and Colorado spent a tremendous amount of money in the permitting process. I mean it is—that is the responsibility that they have to make the process work. Otherwise, it wouldn't happen.

Mrs. LUMMIS. For each of you, if water is treated solely as a commodity, what is the likely human response to a shortage, if it is completely commoditized, and you have to pay for water to have water, regardless of its price?

Mr. O'TOOLE. I will just use the example right now in the Eastern Slope of Colorado. Oil and gas can pay $3,200 an acre-foot for water. And the result of that is farmers out of Fort Collins, for example, cannot afford to compete.

The resource is going to be more competitive. I sit on the Bureau of Reclamation's group that is looking at the Colorado River right now. And the unfortunate reality is that Ag is the reservoir for growth, for energy, for all the other needs for the environment. And I testified earlier that we are expected to produce more food, not less. And there is a conundrum there.

Mr. MCCLINTOCK. Thank you. I am going to have to cut it off there. If you have additional testimony, by the way, you will be invited to provide it for the committee for the record.

Mr. Costa?

Mr. COSTA. Thank you, Mr. Chairman. Mr. Somach, let's continue where we were, and you were about to answer my questions with regards to the progression of the completion of the studies for High Shasta, for Temperance Flat, and Sites—as I understand it, it is kind of in a different category——

Mr. SOMACH. Well, Sites also is having a Federal feasibility study completed.

Mr. COSTA. Right. This year?

Mr. SOMACH. It won't be completed this year. The other two should be completed this year.

Mr. COSTA. This year?

Mr. SOMACH. Yes.

Mr. COSTA. That is what I have been told. Upon the completion of the study, then, our next step would be to determine the financing?

Mr. SOMACH. No, see, I think that that is part of the problem with the process that has gone on. There will be a determination of the cost benefit, you know——

Mr. COSTA. Analysis.

Mr. SOMACH [continuing]. Analysis of those projects. The projects, the way they have been analyzed by the Federal Government, have been analyzed in the normal and ordinary construct of the way the Federal Government visualizes these things. So, as a consequence, what you have is a set kind of project. They go through this long feasibility study. At the end they determine whether or not the project they studied was feasible.

Whereas, if you are Los Vaqueros. So, if you are any one of these other projects——

Mr. COSTA. Which would be expanded for a second time.

Mr. SOMACH. Well, and the point I am trying to make, though, is simply if you look at those from the needs perspective—in other words, rather than formulaically analyzing the feasibility of the project, take a look at what is really needed out of a project, and construct that as part of your feasibility analysis. Then what you can do is tell whether or not you simply have a project that meets the needs that you are trying to meet, whether people can afford that. And that doesn't get done.

So, what happens is, after you get these Federal feasibility projects done, and you determine nobody can afford them, because they analyze the wrong thing, then you have to start all over again to try to figure out what people can afford.

Mr. COSTA. Well, when we get those studies completed this year, then we will be able to make a determination where we are, to your point.

Mr. SOMACH. Exactly. And I think that is what will come out of those things. It takes way too long to get these feasibility studies done in the first place. There is too much drift in the process. It is not that doing the studies are bad, it is that it just simply takes way too long, it soaks up so much in the way of dollars that the projects escalate in cost beyond anything that anyone rational——

Mr. COSTA. Well, I mean, High Shasta is not new. Everyone kind of—even some of my environmental friends suggest that it is one of the better bangs for the buck. But, we get a completed study there, we talk about $1 billion for the cost of the level that they

are talking about increasing the size of the Shasta Dam. You don't have to move the freeway, you don't have to move the railroad track. It seems like we ought to be able to focus on some big projects, as a result of this crisis.

Mr. SOMACH. And particularly with the Shasta or anything that is relying upon Upper Sacramento Valley water, like Shasta does, is climate change is actually something that works very conducively with those types of facilities, because Shasta is already a rain-driven, not a snow-driven reservoir.

Mr. COSTA. Right. And that is going to change the whole operation of both the State and Federal projects, as we better understand the changes in climate and we see, potentially, a receding snowpack that obviously is going to make a broken water system in California even more difficult to provide the water for every region of the State that needs that water.

It seems to me that Doc Hastings' legislation is something that we ought to look on and maybe use Shasta's completion of the feasibility study as a pilot project for where we can move ahead and try to maybe fix a process that clearly, in my opinion, is broken.

Let me just end on this note, and it is a statement. And I worry a lot about the sustainability of the planet, I worry a lot about the sustainability of our Nation. Last year, we clicked 7 billion people. And by the middle of this century, we are going to have 9 billion people on this planet. And the notion that the climate is changing, we are, I think most of us, are aware of. How we provide water for our urban communities, at the same time to try to do our best to protect the environment—I mean Peter Moyle said that this effort to maintain a lot of native species in California with temperature changes may be all for nought 80 years from now.

And how do we maintain the food, the food production that is—we take for granted? We simply take the production of food, whether it is in California or anywhere in America, for granted. And therein lies our problem.

Mr. MCCLINTOCK. All right, thank——

Mr. COSTA. That is a comment, not a question.

Mr. MCCLINTOCK. Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman. And, Mr. O'Toole, just to kind of follow up, we talked a lot about regulatory process, the costs that are being associated. In your view, does State involvement in permitting need to play a stronger role, and some of the advice for the people on the ground, in terms of some of the processes to move forward with these projects?

Mr. O'TOOLE. Yes, sir, Mr. Tipton. And, as you know, the law of prior appropriation gives the priority to the States in the West. And their participation is the crucial participation. What they are trying to do is develop their legal allocations in a system that really deflects the power of the States in favor of sort of other visions. And it has not been—the reality is—reality has shown us what that meant. It means we are not getting projects done. So, I think you are absolutely right.

Mr. TIPTON. Great. And, Mr. Somach, I would like to maybe have you expand just a little bit. When we have been talking about prepayment of loans, I did happen to write down when you visited

with your wife and—probably always taking good advice, early repayment of interest loan has to be able to be a good deal.

But let's talk about, for just a moment, if you would, some of the collateral benefit of that. Would that help attract private investment?

Mr. SOMACH. Yes. I don't think there is any question. In other words, if the problem—there are a number of reasons why someone would look toward early repay. So then, now, the flip side is, are there benefits that ripple out from that?

Well, if you are complaining about the subsidy, the subsidy ends. And then, if you are looking toward the privatization, or moving the capital aspects of this out into the financial markets, it, of course, then expands that out there, where people are going to start looking at stability, taking a look at the underlying investment that is being talked about. And I think that is a positive thing, not a negative thing, in any way, shape, or form.

Mr. TIPTON. Great. When you get a lot of moving parts, as many of you have already noted, in terms of a lot of different policies—and just kind of curious. I noted yesterday that Secretary Vilsack, Department of Agriculture, is going to be coming out with seven regional climate hubs. One of them happens to—apparently, going to be based in Colorado.

I haven't heard of it, we haven't had any contact out of the Secretary's office or the Department of Agriculture, but it is going to be impacting, apparently, with some consultation—sounds nice on the surface—they are going to assess local climate risks, such as drought, wildfire, and then develop plans for dealing with them, such as improved irrigation techniques.

Has the Family Farm Alliance been contacted by—this sounds like policy coming out of the Federal Government right now. Have you been contacted by the Department of Agriculture in regards to these climate zone hubs?

Mr. O'TOOLE. We have not, as an organization. Although I will tell you that we wrote a paper on climate in 2007 that anticipated a lot of these discussions, the need for adaptability and flexibility. And I will just tell you on a personal note, as a permittee on both the National Forest and the BLM, they have now sent us letters saying that climate will be a part of every decision that goes forward. We can't understand what that means. I think, in reality, it will mean a slower process, rather than a more flexible process. That is my personal observation.

Mr. TIPTON. Well, we have—actually, this is a complete side note—we have a Protecting Our Water Rights Act to make sure that the Federal Government—you just noted about the BLM and the Forest Service, where they have tried to appropriate actual water rights in our State and the Western States, simply by Federal fiat, to take those waters from our local communities.

And this is something that, if you would, sir, through your organization, we would love to be able to hear Mr. Hurd—you happen to be a real farmer, real rancher—to be able to get some actual feedback coming in as you hear about another policy coming out of Washington. Because, I don't know about you, but a lot of times I just don't get the warm fuzzies when I hear that the Federal Government is here to help me, that we need to be able to have policies

that are streamlining the process, as we look at Doc Hastings' bill, the Chairman's bill, to be able to actually make a process that is actually going to work, to be able to look out the windshield and anticipate the needs not only of our Ag communities, but our urban centers, as well.

We can streamline it, we can make it more cost effective to be able to achieve. But another government program, another government regulation, coupled with the lack of coordination that we see, seems to be a stumbling block, rather than a stepping stone to the success that I think that we would like to be able to see.

So, gentlemen, thank you for your testimony. I yield.

Mr. MCCLINTOCK. Mr. Huffman?

Mr. HUFFMAN. Just a limited defense of big, bad government, in light of my friend's comments. The wonders of western reclamation and all of the agriculture and water delivery and all that, that was all government. Right? Anybody disagree that none of that would have happened without a big, huge government program?

[No response.]

Mr. HUFFMAN. I think we need to remember some context when we fall into some of the old talking points around here.

And one of the talking points that we hear most often in the Natural Resources Committee is sort of the wonders of fracking and oil and gas extraction.

So, Mr. O'Toole, I want to thank you for acknowledging one of the darker sides of all of the Kool-Aid that has been drunk around here on fracking, and that is there is an awful lot of water involved, and it sounds like, in Colorado, the price of some of that water may be driven up beyond the ability of agriculture to compete for it, which doesn't surprise me, and I think, in some ways, may be a preview of what California could face, as we see more and more proposals to expand fracking.

So your point was useful for a point that I wanted to continue in discussion with Mr. Somach, and that is there is a price point beyond which agriculture has a hard time competing, in terms of purchasing water. I think we all know that. I think we all acknowledge that urban water agencies—desalination was brought up—$1,000 or $2,000 per acre-foot, some urban water agencies are willing to say, with their eyes wide open, "We need water so badly that we are willing to do that." And in some ways, that is the ultimate beneficiary pays situation, it is a very transparent, non-subsidized decision when that is the way it works. Water can fetch a pretty high price when it gets scarce. But I am not aware of anybody in agriculture that is paying, on any kind of a regular basis, at least, $1,000 or $2,000 an acre-foot.

And so, Mr. Somach, I guess my question for you is, really, shouldn't we kind of flip this study process around a little bit? Shouldn't we identify the users out there in agriculture who are willing to pay a certain amount of money per acre-foot, and then go out and start looking for projects that can be brought in at that price point, perhaps with some partnership and cooperation with the Federal Government? But shouldn't that price point be driving the exploration, instead of the other way around?

Because all of the initial dollar-per-acre-foot numbers I have, at least, seen—and maybe you can correct me if you know of other in-

formation—but it has been way more than anybody that I know of in agriculture has ever been willing to pay on a sustained basis.

Mr. SOMACH. Yes. Well, let me say three things about that. Number one, that was, in fact, the point I was trying to make, in part, when I was addressing Mr. Costa's comments, is that feasibility studies need to take a look at what people can pay and what people want. And if what comes out of that is just too expensive, then you shouldn't proceed with a project that people can't pay for.

I do think, though, that—because I also agree that providing Federal loans, Federal dollars, is not a bad thing; that is a good thing, because it is a broad, public benefit—but those things help offset some of what would be the higher cost.

Second point I want to make is that, while agriculture can't necessarily compete across the board, the competing needs—and let's call those urban needs—are not necessarily so large that agriculture and urban needs can't be accommodated. And I think the best example of that is the fact that water and water rights—this is something I mentioned yesterday—have always been alienable, which means they can be transferred, they can be sold on a temporary basis, to move from where there is surplus—for example, at times, certainly not this year, but at times, from the Sacramento Valley down into either other agricultural areas, or down into southern California—and I think those are good things that need to happen, and they help address this issue that you are raising, in terms of affordability of water.

Mr. HUFFMAN. Just in the limited time I have left, I see that there is an assumption. Putting aside the concerns that the Bureau of Reclamation may have about the accelerated prepayment, and assuming that could be worked out, but the assumption is that it is about $400 million a year that could be created as a revenue source if this worked.

Can anyone speak to what that assumes? Does that assume all Central Valley project water contractors are opting to prepay? What level of uptake is required to get to that very significant revenue stream? And—yes?

Mr. ELLIS. Mr. Huffman, as I read the bill, it is actually the prepayment—so the conversion of the contracts—that is in excess of what is in the discussion draft, which is $400 million per year for 5 years. So it is additive, on top of that. But if the discussion draft, working with Chairman Hastings' bill was actually enacted, that is the way it would work. So it is actually more—that is just gravy, if you would, on top of this $2 billion slush fund.

Mr. HUFFMAN. Thank you, Mr. Chair. I was just curious where that money comes from.

Mr. MCCLINTOCK. And the opportunity exists for Members to submit additional questions, and for the witnesses to provide additional testimony in writing to be part of the record.

I want to thank our witnesses and our Members for a very interesting discussion on this subject. The hearing record is going to be open for 10 days in order for additional questions to be submitted and answers to be received. And, if there is no further business before the committee, without objection, the subcommittee stands adjourned.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned.]

[Additional Material Submitted for the Record]

PREPARED STATEMENT OF THADDEUS BETTNER, PE, GENERAL MANAGER, GLENN-COLUSA IRRIGATION DISTRICT

LEGISLATIVE HEARING ON H.R. 3981, H.R. 3980, AND DISCUSSION DRAFT TO AUTHORIZE A SURFACE WATER STORAGE ENHANCEMENT PROGRAM

Chairman McClintock and members of the subcommittee, I am Thaddeus Bettner, the General Manager of the Glenn-Colusa Irrigation District [GCID], the largest irrigation district in the Sacramento Valley and the third largest irrigation district in the State of California. I appreciate the opportunity to provide GCID's perspective on the issue of how the Federal Government can help address the challenge of building new water supply projects in the Western United States.

GCID covers approximately 175,000 acres in Glenn and Colusa Counties, and is located about 80 miles north of Sacramento. Our district contains a diverse working landscape including a variety of crops such as rice, tomatoes, almonds, walnuts, orchards, vine seeds, cotton, alfalfa, and irrigated pasture. Just as important, we convey water to three Federal wildlife refuges totaling more than 20,000 acres, and also deliver water to more than 50,000 acres of seasonally flooded wetlands. GCID is a Sacramento River Settlement Contractor and diverts water directly from the Sacramento River through the largest flat plate fish screen in the world. GCID's Settlement Contract was first entered into in 1964 and it resolved disputes with the United States related to the seniority of GCID's rights over those of the United States and, in fact, allowed the U.S. Bureau of Reclamation (Reclamation) to obtain water rights from the State Water Resources Control Board for the Central Valley Project. GCID's water rights originated with a filing in 1883 for 500,000 miner's inches under 4 inches of pressure, one of the earliest and largest water rights on the Sacramento River. Other Sacramento River Settlement contracts were also entered into among water right holders on the Sacramento River and Reclamation.

Notwithstanding the seniority of our water rights on the Sacramento River, the greatest water infrastructure challenge we face is in securing new storage. The pressures on our water infrastructure continue to grow each year from changed hydrology associated with the climate change, population growth and new demands for water for the environment. In this context, I want to focus on three issues: (1) why we need additional storage in the Sacramento Valley; (2) the importance of streamlining the environmental review processes related to the construction of new surface water storage projects as provided for in H.R. 3980; and, (3) the need for additional Federal support for Federal and non-Federal surface water storage projects as provided for in the discussion draft authorizing the Secretary of the Interior to implement a surface water storage enhancement program.

THE IMPORTANCE OF STORAGE

New storage is vitally important to GCID and all of northern California because the Federal Central Valley Project [CVP], which our water diversions are intertwined with, and the State Water Project have both lost water supply yield and operational flexibility. That yield and flexibility has eroded over time due to increased contractual obligations and increased water demands to meet the needs of endangered species and the State and Federal refuge system. And, in periods of severe drought like the one we are experiencing now, the lost water supply yield and operational flexibility is only compounded.

We do not need much in the way of additional water supplies in the Sacramento Valley, but without new storage, the pressure on our existing water supplies will continue to grow. The State's population continues to increase and the reallocation of water to environmental uses is expanding. This reality continues to play itself out, especially given that no new investments in the development of additional water supply or storage have occurred. For water users north of the Delta, in the area of origin, the ever-increasing demand for water, coupled with no new storage, represents a threat to the vitality of irrigated agriculture in the Sacramento Valley, our local environment including the protection of the Pacific Flyway, and our groundwater system which sustains our rivers, creeks and streams. A strong agricultural sector and healthy environment depend heavily upon a certainty of water supply. Disrupt that certainty, allow the strain on existing water supplies to persist, and investments in agriculture will not be as readily forthcoming. That lack of investment translates into a dim future for agriculture and continued instability in water supplies, which will threaten the economic health of the State as a whole.

As I have shared with the committee before, the greatest obstacles to completing the Sites Project, the CALFED North-of-the-Delta Offstream Storage [NODOS] project currently being carried out by the California Department of Water Resources [DWR] and Reclamation, in partnership with local interests, are the convoluted planning and environmental review processes.

While part of the delay is certainly due to the complexities associated with multiple State and Federal agencies being involved in the project, other delays are attributable to shifting environmental requirements. For example, delays in completing the Sites project environmental review process are attributable in part to changes in operational conditions described in the Central Valley Project Operations Criteria and Plans [OCAP] Biological Opinions [BOs] in 2004/2005 and then again based upon a Biological Opinion from U.S. Fish and Wildlife Service regarding the Delta Smelt issued in 2008. In both instances, DWR and Reclamation had to go back and remodel the project, based on the revised BOs. As Reclamation's Mid-Pacific Regional Office noted in a letter to "Interested Parties" in May 2009, "Changes are continuing so rapidly that our studies and reports are not keeping pace."

This new information did not, in fact, change the fundamentals of the project. The fundamentals of the project remained sound, but the process stalled further increasing costs and further delaying the availability of the many benefits a Sites Reservoir will provide.

H.R. 3980 seeks to address many of the challenges we have faced in trying to move the Sites project forward by establishing a lead agency to coordinate all Federal environmental reviews related to a surface water storage project and directing that a schedule be established and strictly adhered to by Reclamation for the completion of all environmental review processes. While H.R. 3980 only applies to projects on Department of Interior and Department of Agriculture lands, I encourage the committee to consider expanding this directive to cover projects, like the Sites project, that are now expected to be constructed by non-Federal entities in cooperation with Reclamation and other Federal agencies on non-Federal lands.

H.R. 3980 makes a significant contribution to efforts to make the permitting and environmental review process for water supply projects more efficient and effective, and I look forward to working with the committee to identify other measures that will help streamline the Federal planning and environmental review processes further.

DISCUSSION DRAFT—SURFACE WATER STORAGE ENHANCEMENT PROGRAM

I strongly endorse the committee's efforts to identify ways the Federal Government can provide financial support to new surface water storage projects west-wide. The discussion draft proposes to establish a new Surface Water Storage Enhancement Program that would provide financial support to both Federal and non-Federal surface water storage projects alike. The inclusion of non-Federal water users is particularly important to the Sites Joint Powers Authority, which, as I have discussed with the committee in the past, was formed in August of 2010 for the sole purpose of establishing a public entity to design, acquire, manage and operate Sites Reservoir and related facilities to improve the operation of the State's water system.

Those of us in the Sites JPA believe we can complete the planning, design and construction of a Sites project in no less than half the time and at less cost than would be required if the project were to constructed as a traditional Reclamation project. And, as the current drought highlights, we do not have time to waste. This facility, if it is going to be built, needs to be constructed quickly and efficiently, and having the ability to compete for the Federal financial support that would be available through the Surface Water Storage Enhancement Program would be greatly beneficial and allow Sites to move forward on an expedited basis.

Thank you for the opportunity to submit this testimony, and I greatly appreciate the subcommittee's proposals to streamline the environmental review processes and support the construction of new surface water storage.